

Before the
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In the matter of:

Distribution of the
1998 and 1999 Cable
Royalty Funds

Docket No.
2001-8 CARP CD 98-99

Room LM-414
Library of Congress
First and Independence Ave. S.E.
Washington, D.C. 20540

Wednesday,
May 14, 2003

The above-entitled matter came on for hearing,
pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE CURTIS E. Von KANN
THE HONORABLE JEFFREY S. GULIN
THE HONORABLE MICHAEL D. YOUNG

Chairman
Arbitrator
Arbitrator

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John Fuller

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By Mr. Stewart		3354	3590
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By Mr. Garrett			3630

E-X-H-I-B-I-T-S

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P-R-O-C-E-E-D-I-N-G-S

(9:33 a.m.)

JUDGE von KANN: Good morning, everyone.

Any preliminary matters before we get going?

(No response.)

JUDGE von KANN: Okay. Apparently not.

Mr. Hester?

MR. HESTER: Public Television Claimants

call as our next witness Mr. John Fuller.

JUDGE von KANN: Okay. Mr. Fuller, good

morning.

THE WITNESS: Good morning.

THE REPORTER: Mr. Fuller, would you raise

your right arm, please?

Whereupon,

JOHN W. FULLER

was called as a witness by counsel for the Public
Television Claimants and, having been first duly
sworn, was examined and testified as follows:

THE REPORTER: Thank you.

DIRECT EXAMINATION

BY MR. HESTER:

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1 Q Could you state your name and title for
2 the record, please?

3 A My name is John W. Fuller. And I'm the
4 senior director of research at PBS.

5 Q Mr. Fuller, could you describe your
6 responsibilities at PBS?

7 A My responsibilities include the management
8 of the PBS research department. And specifically we
9 are in charge and responsible for the analysis data
10 collection of audience data and also marketing
11 research projects at PBS.

12 Q How long have you been with PBS?

13 A Since 1980, 22 years.

14 Q And how long in your current position?

15 A Since '99.

16 Q What positions did you hold previously at
17 PBS?

18 A From '85 to '99, I was the director of
19 research. And from '80 to '85, I was associate
20 director of research.

21 Q So you've been in research positions
22 during your entire time at PBS?

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1 A The whole time.

2 Q Before you joined PBS, what job positions
3 did you hold?

4 A Okay. Going backwards from '76 to '80, I
5 was a project manager at the Arbitron Ratings Company.
6 Prior to that, I spent four years as program and
7 research director of WTLV, Jacksonville, Florida, an
8 NBC affiliate. Prior to that, I was in graduate
9 school at the University of Florida.

10 Prior to that, '66 through '70, I was a --
11 had several positions, director and -- studio director
12 and promotion manager variously at WJKS TV in
13 Jacksonville, Florida, an ABC affiliate; before that,
14 a radio station; and before that, Florida State
15 undergraduate.

16 Q Mr. Fuller, are you sponsoring testimony
17 and accompanying exhibits in this proceeding?

18 A Yes.

19 MR. HESTER: I would make the witness
20 available for voir dire.

21 JUDGE von KANN: Any voir dire?

22 MR. STEWART: None.

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1 JUDGE von KANN: Okay.

2 BY MR. HESTER:

3 Q Mr. Fuller, I wanted to ask you first to
4 turn to page 3 of your testimony.

5 A All right.

6 Q At the bottom of the page, you have a
7 sentence that discusses the fact that 23 percent of
8 cable systems retransmitted a distant Public
9 Television signal in 1998 and 1999. Do you see that?

10 A Yes, I do.

11 Q Could you just explain that statement a
12 little bit more and explain the basis for that
13 conclusion?

14 A Well, it's very straightforward. Of all
15 of the cable systems in the country during that period
16 of time, almost a fourth of them were carrying at
17 least one Public Television signal on a distant basis.
18 And also of those, half of them were also carrying a
19 local signal, in addition to the distant signal, which
20 is interesting evidence of the additional value that
21 the distant signal brought in I think.

22 Q I wanted to ask you, please, to turn to

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1 exhibit 15, PTV exhibit 15, which is indicated as the
2 source for your statement there. Could you simply
3 help us walk through the tables in this exhibit, the
4 columns in this exhibit 15, so we can understand what
5 the data reflect here?

6 A Sure. First of all, all of the data in
7 here have to do with systems that carry at least one
8 distant Public Television signal. So that's the
9 universe of numbers we're looking at. And probably
10 the best place to start is the center column, which
11 gives that total number.

12 There's about 500 over the years. It has
13 actually increased a bit, systems that carry at least
14 one public station on a distant basis. The column to
15 the left of it, which, actually, I guess, is the
16 second column, shows the number of those systems that
17 not only carry a distant signal, but also a local
18 Public Television signal at the same time.

19 So then if you skip over to the last
20 column on the right, then you can see the proportion
21 that that represents, which is to say about one-half,
22 which was my statement earlier, carried both a local

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1 and a distant signal.

2 Q And the reference to systems here, could
3 you describe what kinds of systems you're referring
4 to, these Form 3 systems?

5 A Oh, well, all of these are Form 3. I
6 mean, they are the larger systems excluding, of
7 course, Form 1 and Form 2.

8 Q And so does this reflect at least some
9 amount of increase in the number of systems that
10 carried at least one Public Television signal from
11 1992 through 1999?

12 A Right. That's what I mentioned earlier.
13 You can see it in both columns. The number to carry
14 at least one has gone up from over the whole period
15 from 479 to 524. It's about a ten percent growth, I
16 think. And then the number that carried both a
17 distant and a local has gone from 228 to 265, a little
18 wobbled in there but generally an increase over the
19 period.

20 Q Now, I wanted to ask you next to help us
21 walk through table 16.

22 MR. HESTER: I should remind the panel you

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1 may recall there was a motion we had filed to correct
2 exhibit 16 and some of the references to it in Mr.
3 Fuller's testimony that was granted by the panel. So
4 I hope you have the corrected exhibit 16 somewhere.

5 JUDGE von KANN: I have your corrected
6 pages. So the answer is yes.

7 MR. HESTER: Okay. Good.

8 JUDGE von KANN: Let me ask Mr. Fuller one
9 question about 15 before we leave it, make sure I am
10 following it. Focusing on, let's say, the last
11 number, 99-2, we have got 534 Form 3 cable systems,
12 which are carrying at least one PBS station as a
13 distant signal.

14 THE WITNESS: That is right.

15 JUDGE von KANN: And of that,
16 approximately half also carry a local PBS station, in
17 addition?

18 THE WITNESS: Right, exactly right.

19 JUDGE von KANN: Now, that 534 is about a
20 fourth of the roughly 2,000 or so Form 3 cable systems
21 in the country, as I understand it.

22 THE WITNESS: Exactly.

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1 JUDGE von KANN: I gather there may be an
2 additional group of Form 3 cable systems beyond this
3 534, maybe -- I don't know. Is this possible? -- that
4 are carrying PBS as a local signal and on any distant
5 PBS, but they have a PBS station on their cable
6 system, which happens to be the local one.

7 THE WITNESS: That's right. I think most
8 systems carry at least a local PBS station, you know,
9 like 98 percent.

10 JUDGE von KANN: That was my question. Do
11 you have any sense? And you think it's about 98
12 percent of all Form 3?

13 THE WITNESS: That's my recollection, yes.

14 JUDGE von KANN: Okay. I realize if
15 nobody has got a distant one, then it's not
16 compensable in this proceeding, but it gives us some
17 sense of the cable operator's interest in PBS at
18 least.

19 So the fourth sounded a little bit skimpy,
20 and I wanted to see whether, in fact, a much broader
21 carriage occurred. And the answer is yes, but a big
22 chunk of them are just carrying the local station.

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1 THE WITNESS: That may be related not so
2 much to whether or not they want the carriage as to
3 the fact that we have so many transmitters. We have
4 like 342 transmitters in 50 states.

5 JUDGE von KANN: Right.

6 THE WITNESS: Whereas, ABC or CBS would
7 have maybe 205 roughly. So there are a lot more
8 stations spread around to be close to a cable system
9 as local.

10 JUDGE YOUNG: Are PBS subject to
11 must-carry? Would you be the beneficiary of
12 must-carry?

13 THE WITNESS: I am not positive. I think
14 so, but I am not positive.

15 JUDGE GULIN: Ninety-eight percent you
16 believe have a local or 98 percent have either a local
17 or distant?

18 THE WITNESS: That would be either. They
19 have some public stations.

20 JUDGE GULIN: What I am trying to get a
21 handle on is the don't have a local. What percent of
22 them bring in a distant if you happen to --

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1 THE WITNESS: Of those who don't have --

2 JUDGE GULIN: Don't have a local. I was
3 trying to figure that out from your testimony.

4 THE WITNESS: That's actually I think on
5 the next exhibit.

6 BY MR. HESTER:

7 Q Let me ask you, Mr. Fuller, first. Let's
8 stick with this question from the panel about the 98
9 percent. If you look over at the top of 4 in your
10 testimony --

11 A Page 4?

12 Q Page 4.

13 A Oh, there it is. It says over 98 percent
14 of all Form 3 cable systems carried at least one
15 Public Television signal.

16 JUDGE GULIN: Either local or distant?

17 THE WITNESS: Local or distant.

18 BY MR. HESTER:

19 Q So how would that relate to the question
20 raised as to whether if the cable system does not have
21 a local signal, it would carry a distant signal?

22 A Well, it is the difference, I believe.

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1 I'm doing this off the top of my head. If 98 percent
2 carried -- that can't be right. We have evidence in
3 exhibit 16 that shows that about -- what is it, about
4 2.1 million are carrying at least one distant signal
5 but no local signal. So that translates into what, a
6 little under four percent, I believe, of all cable
7 households.

8 Q You're not putting it in terms of
9 households.

10 A Yes.

11 Q I wanted to focus first in terms of
12 systems.

13 A Oh, I beg your pardon.

14 Q If 98 percent of Form 3 systems carry a
15 Public Television signal, what does that tell you
16 about the likelihood that they imported a distant
17 signal if they didn't have a local?

18 A Well, we know 23 --

19 JUDGE GULIN: I know it's very light. I
20 was just trying to get an idea of percentages.

21 MR. HESTER: Right.

22 THE WITNESS: Right.

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1 JUDGE von KANN: I have a feeling while
2 we're doing this somehow coming back to me is sort of
3 the question if Martha has seven marbles and Susan has
4 four marbles but they each together have -- somehow I
5 think the way to --

6 THE WITNESS: I feel the same way, sir.

7 MR. HESTER: We will work on that one,
8 Judge. We will work on that one.

9 BY MR. HESTER:

10 Q Let's see if we can turn to exhibit 16.

11 I wanted to make sure. Does the panel all
12 have the corrected exhibit 16?

13 JUDGE von KANN: What was the number of
14 transmitters you had local, 300 and --

15 THE WITNESS: Three forty-two the last
16 time I looked. It might be off by one or two.

17 JUDGE von KANN: ABC had how many, 200?

18 THE WITNESS: Approximately 205, 207, 210,
19 somewhere in that zone.

20 JUDGE von KANN: Okay.

21 BY MR. HESTER:

22 Q Mr. Fuller, if you could turn to exhibit

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1 16? And you have the corrected version there as well?

2 A I do.

3 Q I wanted to ask you first to give us an
4 overview of what these columns signify.

5 A All right. I corrected myself a moment
6 ago. These are all subscribers, not cable systems.
7 And this is a count. Well, first of all, start with
8 the right-hand column. That is total cable
9 subscribers in the United States, plain and simple.
10 Then the columns --

11 JUDGE YOUNG: All of these are households?

12 THE WITNESS: No. All of these are --
13 yes, I beg your pardon. They're households or
14 subscribers, same thing. The first column with data
15 in it is the number of households that receive at
16 least one distant Public Television signal and no
17 local, just distant Public Television.

18 The middle column is the number that
19 received at least one distant Public Television signal
20 and one local. The third column of data is at least
21 one distant public station and two or more local
22 stations.

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1 BY MR. HESTER:

2 Q So if we look at the first column of data
3 on the left, subscribers whose first Public Television
4 signal is distant, this signifies subscribers who do
5 not have access to a local Public Television signal
6 and receive --

7 A That is correct. The only way they can
8 get a Public Television station is on a distant basis.
9 Their system has brought it in that way.

10 Q And then the middle column, which refers
11 to one local, describe again what that one means.

12 A Okay. That's -- again, the tolls receive
13 at least one distant public station, but they also get
14 a local station as well. This was that point I was
15 discussing a moment ago.

16 Q So those would be examples of where a
17 cable operator has elected to bring in a distant
18 signal, even though it has a local Public Television
19 signal on its system already?

20 A That's right. I mean, that could have
21 stuck with the local, but they elected to bring in a
22 distant signal as well for obvious positive reasons.

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1 Q What are some of those positive reasons?

2 A Well, there are two key reasons, I think,
3 as I think John Wilson discussed some yesterday -- at
4 least it came up in the hearing -- that public
5 stations, just the way public stations operate, they
6 have great freedom to schedule however they wish.
7 They can play programs pretty much whenever they want
8 to. So there is a lot of scheduling diversity.

9 The other is a content diversity. John
10 had said -- and I think this is right -- that about 60
11 percent of what stations carry is PBS programs, but
12 the rest of it, they have freedom to put in whatever
13 they wish or they choose to put in whatever they wish.

14 So they acquire programming or they
15 produce programming or whatever, and they come up with
16 this big kind of a semi-unique menu of program
17 content. So between those two things, importing a
18 distant public station, you're pretty much getting a
19 different service for your subscribers. It's got a
20 lot of choice to it, a lot of differentiation, both in
21 scheduling and in content.

22 JUDGE von KANN: Semi-unique? Is that

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1 like being a little bit pregnant?

2 THE WITNESS: You may be right.

3 BY MR. HESTER:

4 Q Then if you move over to the next column,
5 where you see two or more local Public Television
6 stations carried on systems, could you describe again
7 what that column reflects?

8 A All right. Well, it's -- again, they are
9 getting at least one distant signal, distant public
10 station. But the cable operator has chosen to have at
11 least two local stations.

12 And I think this is even further proof of
13 the value of the distant signals because of the --
14 this differentiation I was talking about a moment ago,
15 this semi-unique quality or whatever the phrase is.
16 It's valuable to bring it in. Even if you've got two
17 or more local stations, it's valuable to the cable
18 operator to import distant signals because of the
19 variety.

20 Q Now, Mr. Fuller, if you could just, then,
21 give us the synopsis of what these percentages reflect
22 in terms of total Form 3 cable subscribers that are

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1 receiving a distant Public Television signal? Just
2 walk us through what those numbers would be.

3 A Well, just very simply, there is about ten
4 percent, I believe, in all. If you were to sum all of
5 these, the three data columns, not the total column
6 but the first, second, and third. That's about ten
7 percent of all cable subscribers are getting at least
8 one distant PTV signal.

9 The first column, which is no locals but
10 they're only PTV by distant. That's a little under 4
11 percent, about 3.6 percent, I think. There's close to
12 2.1 million of it. And then if you looked at those
13 that have locals, the second and third columns, they
14 total up to around four million. So that's around
15 seven percent, I believe, or getting at least a
16 distant plus several locals.

17 JUDGE von KANN: Columns 2 and 3 total
18 approximately seven percent?

19 THE WITNESS: That is right.

20 JUDGE von KANN: And Column 1 is about how
21 much?

22 THE WITNESS: About 3.6 percent.

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1 JUDGE von KANN: Thank you.

2 BY MR. HESTER:

3 Q And you had discussed before the number of
4 23 percent of Form 3 systems. I just wanted now to
5 circle back to that to fit it together, the percentage
6 of Form 3 systems versus the percentage of
7 subscribers. And just if you can put them both
8 together?

9 A Well, I am not sure how to say it any
10 differently. The number of systems is -- as a total
11 is greater than the number of subscribers, 23 percent
12 versus 10 percent in this exhibit, which, of course,
13 the key thing here is the number of decisions made by
14 cable operators.

15 So you've got a large, relatively large,
16 number of cable operators making the decision to have
17 a distant PTV signal, even though many of them are
18 smaller systems with not so many subscribers.

19 Q Okay. Let me ask you just to follow up a
20 little bit more on the point you made about the
21 content and schedule diversity of different Public
22 Television signals. If you could turn to page 5 of

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1 your testimony?

2 A All right.

3 Q At the bottom paragraph on page 5, you
4 talk about scheduling diversity of different Public
5 Television stations. Do you see that?

6 A Yes.

7 Q And then you have a sentence in the middle
8 of the paragraph that says, "My own experience and
9 research suggest that repeat telecasts on Public
10 Television are largely additive." Do you see that?

11 A Right. Yeah, I do.

12 Q I wanted you to expand on that a little
13 bit, explain what you mean when you refer to your own
14 experience and research and explain what you're
15 talking about in a little more detail there.

16 A Well, at PBS, we have wondered about the
17 value of repeats over the years. And I do mean over
18 the years, for many years, actually. Should we be
19 repeating programs more to get more value out of them.

20 And so we have done a number of special
21 Nielsen studies that are called only, only, both.
22 They compare the audience of program A with program B

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1 to see what percent watched both and which percent
2 watched just A or just B.

3 JUDGE YOUNG: And A and B are the same
4 program?

5 THE WITNESS: It could be or may not be,
6 but in this case, it is. It's the same show. So
7 we're trying to find out, are we picking up an
8 additional audience? What we found time and time
9 again is that -- and this is on a household basis, not
10 even a person basis, that somewhere in the 8 to 12
11 percent range does see both. But the rest don't.

12 So it's close to -- I'm sorry -- 90
13 percent are totally different audiences. And we
14 haven't done this, but I'm sure that if you did such
15 an analysis on a person's basis, you would find that
16 the overlap goes down even further because I think if
17 the same household tunes into the program twice, -- as
18 I said, around 8 to 12 percent of them do -- you might
19 find that it's the husband one time and the wife the
20 next time that are watching this program, rather than
21 the same person.

22 So there's a lot to be gained from showing

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1 a program twice. And so that's why I say that the
2 audiences are largely additive.

3 BY MR. HESTER:

4 Q We had discussed yesterday and it's also
5 referred to in your testimony the amount of original
6 and first-run programming on Public Television.

7 A Uh-huh.

8 Q I wanted you to talk about the value of
9 that programming, in particular, in terms of cable
10 operators importing distant signals.

11 JUDGE von KANN: Can I ask a question on
12 the peak? It sounds like what you're saying is sort
13 of common sense. It would seem to me if the same
14 program is run at a later time later in the week, not
15 too many people who saw it the first time are going to
16 watch it again, maybe a few, but some significant
17 number of people who had a schedule conflict the first
18 time or heard from somebody, "Hey, there was a great
19 show. You are going to tune in."

20 I wouldn't think this would be unique to
21 PBS. And I guess I would ask you a little bit about
22 that. Why wouldn't this be a phenomenon that might

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1 apply to any number of the claimant groups?

2 We sometimes see a movie is run Sunday
3 night, and then it's run again later in the week or
4 perhaps a particular broadcast, commercial show is
5 repeated. Wouldn't this be a phenomenon pretty much
6 across the board, that if somebody has the capacity to
7 repeat a program, they're probably going to pick up a
8 significant number of new viewers?

9 THE WITNESS: I don't have a lot of
10 evidence on that because we mostly focus on our own
11 stuff, but I will do the common sense thing here that
12 I believe that it probably varies by genre.

13 The movies are a great example of where
14 no, you're not going to turn around and watch the same
15 movie again.

16 JUDGE von KANN: Right.

17 THE WITNESS: But if it's a situation
18 comedy, you might. My wife is so sick of me watching
19 Seinfeld. I cannot get enough of Seinfeld. And I've
20 seen each episode seven or eight times. This is a
21 small addiction, but I'll admit it, nevertheless.

22 JUDGE YOUNG: Let me ask you one question

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1 on that point.

2 THE WITNESS: Sure.

3 JUDGE YOUNG: On page 5, you refer to that
4 research and experience. At least the preceding
5 sentence relates specifically to kids' programming.
6 Is the result different when you look at children's
7 programming, as opposed to other programming? In
8 other words, was there a great incidence of watching
9 the same program twice if you are focusing on
10 children's programs?

11 THE WITNESS: That is a good question. I
12 honestly don't recall. I know we have done some
13 children's studies over the years. It could be a
14 little bit higher overlap with children, knowing the
15 way children watch television. But I just don't
16 recall the percentages.

17 BY MR. HESTER:

18 Q But this point you're making here, Mr.
19 Fuller, relates to the benefits of schedule diversity
20 if there are different --

21 A Overall.

22 Q -- Public Television signals coming into

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1 a particular cable system?

2 A That is right. It's a general statement
3 about the whole schedule, really, is that in general,
4 yes, the audiences are largely additive. There is a
5 lot of unduplicated audience between airings of the
6 same program.

7 Q I wanted to ask you to turn over to page
8 7 of your testimony. In the middle paragraph, there
9 is a sentence about your evaluation of the rates of
10 duplication of schedules.

11 And in this paragraph or this section,
12 you're talking about your study of schedule
13 duplication. And you say, "I'm confident that similar
14 low rates of duplication would be achieved for the
15 1998-99 period if I were to duplicate the complete
16 study you had done before." Do you see that?

17 A I do.

18 Q I wanted to ask you to elaborate on that
19 point and explain the reasons why you're confident
20 that there would be these similar low rates of
21 duplication.

22 A Sure. One of my exhibits -- I've

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1 forgotten the number -- actually has several examples
2 of this. Using a computer program years ago, a
3 mainframe computer program that no longer worked, I
4 had to do the more recent tabulation by hand, which
5 was tedious and smaller.

6 We set up this computer program to compare
7 the program schedules of stations in pairs. So if,
8 for example, in a given market, you would have station
9 A and station B, the computer would look at the unique
10 program code. PBS would have a code for every program
11 just so we could keep track of it so we don't have to
12 use titles, which can get misspelled.

13 So it compares these alpha codes to see if
14 there is a match. And every time we do this, as far
15 as, you know, head to head, this type of analysis that
16 I presented, meaning they aired at the same time.
17 Somewhere around 90 percent of the time, they do not.

18 And we have done this same study with many
19 different stations, many different markets over the
20 years repeatedly for this proceeding and just for our
21 own use. And it always comes out about the same that
22 because public stations have so much flexibility in

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1 when they schedule things, that there's just not very
2 much lining up.

3 Now, there would be on a head to head
4 basis. Now, there is a little more in prime time, a
5 little more, but, even then, stations, as John Wilson
6 said, have the flexibility to slip programs around in
7 prime time. We just ask them to air it on the night
8 we feed it for certain designated programs.

9 But for the entire broadcast state, the
10 duplication on a head to head basis is very small.
11 And you have a sentence at the end of your footnote 2
12 on page 7 where you say that even the figure you just
13 quoted tends to overstate the amount of duplication.
14 I wanted you to elaborate on that point.

15 A Sure. This says seven percent. It's
16 citing one part of my exhibit. As I said, it varies
17 up to as much as 12 percent. But the point is I
18 mentioned those unique program codes. Those are only
19 for the series or if it's a special, you know,
20 one-time-only special, well, of course, the code
21 applies to that one program, but in the case of a
22 series, there will be a four-alpha code for that but

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1 nothing -- but our software does not look at the
2 episode within that series.

3 For example, it might be NOVA, but it
4 could be the program about rockets to the moon or it
5 could be about DNA or something else. So our software
6 does not look for exact matches on episode. So it
7 gives the benefit of the doubt.

8 If they are head to head, they could
9 really be different episodes. But our software treats
10 them as if they're a head to head occurrence and
11 counts them in this tabulation.

12 I hope that made sense.

13 Q So in other words, you would be counting
14 as a duplication NOVA on two signals when, in fact,
15 there might be different episodes on the two signals?

16 A Exactly right.

17 Q Let me ask you to turn over to page 8.

18 JUDGE von KANN: Indeed, again, what you
19 are saying here assumes to me to be sort of just
20 common sense. It's hard to see why a cable operator
21 who has a scarce number of channels to use would
22 utilize one to book a duplicate of something he has

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1 already got.

2 So presumably they do it because there is
3 some significant you say as much as 90 percent
4 variation. I mean, it wouldn't make much sense to use
5 up your channel to just duplicate what you have
6 already got, I would assume.

7 THE WITNESS: That is correct. I
8 certainly agree.

9 JUDGE von KANN: Okay.

10 BY MR. HESTER:

11 Q Mr. Fuller, I wanted to ask you to turn
12 over to page 8. There's a sentence at the bottom of
13 that section right before the heading for part 4 where
14 you say, "When more than one signal is available in a
15 given market, the stations of their own accord will
16 invariably take steps to distinguish their programming
17 mix and schedule." Do you see that?

18 A Yes, I do.

19 Q I just wanted you to talk a little bit
20 about that, what are the drivers that lead stations of
21 their own accord to vary their programming mix and
22 schedule.

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1 A Well, this is the idea of
2 counter-programming. In Public Television, we have --
3 well, this goes back to what I said earlier when I
4 mentioned that we had about 342 transmitters in the
5 United States.

6 So because of that -- and there are far
7 fewer television markets. There are 210 the last time
8 I looked markets. So in any given market, there often
9 is more than one Public Television station in that
10 market.

11 So what are they going to do? Are they
12 going to air the exact same thing at the same time?
13 No. So they will slide programs around to avoid each
14 other.

15 I mean, you can see it in the Washington
16 Post TV booklet that comes out every week looking at
17 the Maryland station versus WETA. Of course, you've
18 got WHUT, which is doing something entirely different
19 because they're a different type of operation.

20 But even WETA and WMPT are on many nights
21 slipping their programs away from each other a little.
22 If we feed, say, Frontline at 9:00, one of them may

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1 air Frontline at 9:00 and the other one at 10:00. So
2 that's mainly what I was referring to there.

3 Q And they also look for different
4 programming content, in addition to slipping
5 schedules?

6 A They will do that with their own
7 acquisitions and productions. Of course, they will.
8 I mean, there are different program managers at each
9 station. And they want to look different.

10 I mean, if they are competing -- well,
11 competing. They are trying to get audiences in the
12 same market. They -- I mean, it's just business sense
13 to offer a different kind of service.

14 JUDGE von KANN: Do they contact one
15 another to do that? I don't want to raise any
16 antitrust issues or whatever there might be. Does
17 this just happen to work out miraculously or do they
18 tend to --

19 THE WITNESS: Well, in the television
20 business, you just try to find out the best way you
21 can, you know, by knowing somebody or hearing what the
22 other person is doing. I don't know whether they talk

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1 or not. I really don't. You find out the best way
2 you can.

3 JUDGE YOUNG: You were here for the Wilson
4 testimony yesterday.

5 THE WITNESS: Yes.

6 JUDGE YOUNG: And I assume you heard him
7 refer to -- I forget the right, proper words, but
8 instead of an agreement, informal agreement, to try to
9 coordinate better prime time. Is that affecting these
10 results?

11 THE WITNESS: That's what I was referring
12 to just a moment ago, but I don't think I used the
13 term, the common carriage agreement.

14 JUDGE YOUNG: Right.

15 THE WITNESS: Yes, that's in prime time.
16 And that would have the effect of, well --

17 JUDGE YOUNG: Is that what you're
18 referring to maybe doing Frontline at 10:00, as
19 opposed to 9:00 or Frontline at 8:00?

20 THE WITNESS: Yes, yes, because the
21 agreement only asks stations to air a designated
22 program. First of all, PBS designates about 500 hours

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1 of programming a year for common carriage. That's out
2 of something like 1,100 in prime time.

3 Of those that are designated, all the
4 station is asked to do is air the program on the night
5 that PBS feeds it on the satellite within prime time.

6 So if we feed a program at 8:00, they have
7 the flexibility at the stations of slipping it to
8 8:30, to 9:00, to 9:30, 10:00, whatever works for
9 them. That's it.

10 JUDGE YOUNG: And what about in the
11 morning, where presumably most PBS stations want to
12 attract kids? There's only a certain number of
13 programs you have. Do they tend to have duplication
14 there?

15 THE WITNESS: There actually is not very
16 much. The stations truly exercise their right to
17 flexibility in the daytime. And part of that is --
18 part of the reason for that is because some of them
19 will break away in the middle of the day.

20 Now, even though PBS feeds a solid block
21 of children's programming from 7:00 in the morning
22 until 6:00 p.m. Monday through Friday, some stations

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1 will break away around the middle to offer adult
2 programming because most children are in school, at
3 least older children, not -- many of the preschoolers
4 are in preschool.

5 So you may have adult learning courses
6 inserted in or maybe repeats of Masterpiece Theatre,
7 that sort of thing, a little block right in the
8 middle. So that means they're not using some of the
9 children's programming we feed.

10 So that being the case, that makes it
11 possible for them to then slip programs around, move
12 them back and forth and pick and choose. And because
13 of that, you don't have very much, I mean, really very
14 little head to head during daytime.

15 JUDGE YOUNG: And the last question is,
16 for your informal survey in 1999, how did you select
17 the 15 or so markers you looked at?

18 THE WITNESS: Well, it was truly on an
19 informal basis. I had a printout listing cable
20 systems. I believe it was a Larson printout. And I
21 just went through trying to geographically disburse
22 the ones that appeared so that I didn't have them all

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1 bunched in the New England or bunched in the South or
2 whatever. And I just manually picked them.

3 That's why it's called informal. It's not
4 a scientific sampling design.

5 BY MR. HESTER:

6 Q And even though you did this on an
7 informal basis, were the conclusions consistent with
8 what you would have expected and what you had seen in
9 your earlier, more rigorous study?

10 A That is right. It comes out the same.
11 And we had had so much experience with this in the
12 past I really didn't feel disturbed by using an
13 informal sampling system. And it didn't come out
14 different. I mean, if it had been radically
15 different, I think I would have gone back to the
16 drawing board. But it's the same story.

17 Q Let me ask you to clarify one point on the
18 common carriage agreement. Even as to the common
19 carriage agreement, particular stations are able to
20 decide that they are not going to follow what is
21 suggested in terms of the common carriage. Is that
22 right?

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1 A There's two conditions where that happens
2 that I recall. One is we -- I think John mentioned
3 this yesterday, John Wilson, that there was a class of
4 membership of PBS that -- well, he might not have
5 mentioned this term. Program differentiation policy
6 is what it's called. I think it comes from our
7 membership committee or it's a PDP station. And they
8 pay one-fourth, I believe, the dues of other stations
9 and get one-fourth the programming that full member
10 stations get.

11 So right there you have a big
12 differentiation in schedule because they have to go
13 out and find the other three-fourths programming on
14 their own.

15 The other one is when a station requests
16 a waiver of the PBS board's membership committee
17 because there are two stations in the market or three
18 stations or whatever it is and they don't want to do
19 the same thing, they don't want to be required to air
20 the same thing as the major station. So they
21 demonstrate that their case to the membership
22 committee, which then votes whether or not to allow

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1 this waiver -- and if they do, then the station is
2 exempt from common carriage.

3 And we have a number of them. I don't
4 remember the number, but there's a number of them.
5 And, of course, they're in markets where there's
6 several public stations at a time.

7 JUDGE von KANN: One last thing. If
8 you've got a cable system that is carrying its local
9 Public Television station and it decides it wants to
10 get a second one that is going to be a distant signal,
11 we've sort of been talking here about Baltimore and
12 Washington, another one.

13 THE WITNESS: Sure.

14 JUDGE von KANN: I guess the operator
15 could choose any Public Television station around the
16 country. It doesn't have to be one that's -- they
17 could go to WGBH in Boston, --

18 THE WITNESS: Right.

19 JUDGE von KANN: -- which I think is sort
20 of regarded as a particularly fine one. Maybe
21 stations tend to be a nearby station, sort of in the
22 same region, or is there --

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1 MR. HESTER: It's coming in the testimony.

2 JUDGE von KANN: Is it? Yes.

3 THE WITNESS: The answer is yes. They do
4 tend to be regional. And the reason for that is
5 because people, viewers apparently -- this makes sense
6 to me -- want to see regional types of programming.

7 You know, if a station is producing like
8 local news or local nature shows or local public
9 affairs or like here in Washington we have a local
10 arts program and you're in Fredericksburg, for
11 example, that would be of interest because you can
12 come to Washington and, you know, enjoy the performing
13 arts here if it's an art show.

14 So the answer is yes. I don't know if --
15 I'm sure there are a few isolated examples of
16 importing something really, really distant, but I just
17 personally don't know of any. I think it's quite
18 rare.

19 JUDGE von KANN: Okay.

20 BY MR. HESTER:

21 Q And just to follow up on that briefly, Mr.
22 Fuller, if you look at the top of 6, this is where you

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1 discuss that.

2 A Page 6?

3 Q Yes.

4 A Okay. Well, yeah, virtually all carried
5 a signal from a nearby city.

6 Q And the first sentence in the paragraph,
7 if you might just elaborate on that a bit, where you
8 talk about providing the programming of regional
9 interest that the smaller local stations are unable to
10 produce? If you could just talk about that a bit?

11 A Well, when there is a difference like
12 that, I was talking -- talked a little about the
13 regional appeal. But if you're talking about a
14 station that's in a small county with a small -- some
15 distance away from a large city, sure, the station is
16 going to be operating on a small budget and they're
17 not producing.

18 It's very expensive to maintain a studio
19 and a staff of production people. Even a lot of
20 commercial stations have gotten out of that. So yes,
21 you could then import programs that they could never
22 produce themselves because the signal is coming, the

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1 distant signal is coming, from a major market where
2 the station is better-heeled, they've had more funding
3 and they have a production staff.

4 Q So we discussed yesterday an example of a
5 Buffalo station that was televising the Buffalo
6 Philharmonic that was going around to cable systems in
7 western New York.

8 A Right.

9 Q Would that be an example of the
10 phenomenon?

11 A That's a perfect example. I mean, that
12 would be a very expensive production to put on,
13 multiple cameras with a remote pickup and whatnot.
14 No, a small station would never do anything like that.

15 Q So that's an example of adding diversity
16 and programming content by importing the distant
17 signal?

18 A Of course.

19 Q Let me ask you to turn over to a
20 discussion on children's programming at pages 8 to 9.

21 JUDGE von KANN: This last point suggested
22 clustering doesn't apply only to commercial TV

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1 stations. Perhaps it's a similar kind of issue. It
2 don't know.

3 BY MR. HESTER:

4 Q At the bottom of 8, you refer to the
5 unique and unparalleled children's programming on
6 Public Television. I wanted you simply to elaborate
7 on that a bit, please.

8 A Well, "unique and unparalleled," it all
9 begins with the fact of our mission. We are an
10 educational broadcasting service. And nowhere is that
11 clearer than in our children's programming.

12 We are not providing children's
13 programming just to amuse children. I mean, they can
14 go elsewhere for just pure amusement. There's
15 something lurking behind all of our children's shows.

16 Because we're noncommercial, there's, of
17 course, a benefit there in that there are not
18 commercials inserted in this educational programming
19 that will cause the children to go screaming to their
20 parents for expensive toys or for sugar-coated cereals
21 or that sort of thing.

22 So if a parent wants a child, say, a

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1 three-year-old, four-year-old, whatever to sit down
2 and watch a little television that is good for them,
3 they don't have to worry about the commercials that
4 are going to be force-fed on them.

5 Another thing is that our programming, as
6 I said, it's educational. And this is what I think
7 makes our service unique because it's totally
8 educational, not that there aren't some other channels
9 that have a little educational programming, but ours
10 totally are.

11 And we address not only some -- I don't
12 know if this is appropriate to say for small children
13 but curricular type things, learning numbers and
14 counting and vocabulary and whatnot, but also there is
15 like social, psychological content focusing on how to
16 help the child understand his or her place in the
17 world, how to get along with others, how to
18 understand, how to react when their feelings are hurt,
19 that sort of thing. I mean, Fred Rogers was, of
20 course, the past master of that, but we have lots of
21 other stuff, other shows that feature that same kind
22 of thing.

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1 This service does have substantial content
2 for little children, the preschoolers, but we have
3 also been expanding into the older children area. And
4 now we have programming for the six to
5 eight-year-olds, some a little older than that even.

6 Q And is that programming of an educational
7 nature directed at older children something that is
8 hard to find elsewhere in television?

9 A I would certainly say yes. Again, that is
10 our mission. And there is very little of it
11 elsewhere.

12 JUDGE GULIN: Back in '98-'99, was
13 Nickelodeon -- would you consider that a children's
14 educational --

15 THE WITNESS: For the most --

16 JUDGE GULIN: -- or was that more kind of
17 entertaining we're talking about?

18 THE WITNESS: I beg your pardon. It is
19 largely entertainment. They did start a service
20 called Nick Jr., which is -- I don't know the length
21 of it, but it's an hour or two, I think, in the
22 morning. It does have some similar content.

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1 JUDGE GULIN: So you wouldn't consider
2 Nickelodeon to be a look-alike back in '98 and '99?

3 THE WITNESS: No on the basis of
4 proportion. You know, they're primarily an
5 entertainment service.

6 BY MR. HESTER:

7 Q And could you just describe a little bit
8 more about the target audience of Nick Jr.?

9 A My understanding and recollection is that
10 it's preschoolers.

11 Q So it didn't address the older children?

12 A Not Nick Jr., no.

13 Q On page 10 if I can direct you there, in
14 the middle of the page, you say that children are avid
15 viewers of PBS programming. Could you discuss that in
16 a little more detail?

17 A Well, the idea of them being avid viewers
18 is inferred from comments that we have gotten over the
19 years from parents, from the results of surveys, where
20 they discuss how parents discuss how their children
21 love the programming, how much they like it, and then,
22 of course, the fact that a lot of them watch it. We

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1 know that from surveys, Nielsen surveys.

2 So all of those things in combination, I
3 think, have given us the feeling that our programming
4 is valued by the viewer, the parents.

5 Q And you say in the next paragraph, the
6 first line, "Many parents are insistent about the
7 value and necessity of children's programming on
8 Public Television." I wondered if you could elaborate
9 on what you mean by that and why you say that.

10 A Well, in addition to the informal contact
11 that we have with parents and our stations have with
12 parents and the fact that many parents make
13 contributions to their local stations to support, they
14 will mention the children service, we also have seen
15 survey results that we have conducted over the years
16 in which they give high scores to Public Television
17 for the children's service. But it's important to
18 them that it's well-done, that it really applies to us
19 in a strong way.

20 Q I wanted now to turn and talk about the
21 relevance of all of this to assessing the value of
22 Public Television distant signals for cable operators.

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1 If you could talk about that a bit?

2 A Well, in sum, I think we have a valuable
3 high-quality, in many ways unique service that a cable
4 operator would be remiss if not offering it. We have
5 discussed a number of things: the variety of the
6 schedule; the variety of content' the educational
7 content of the children's programming, educational in
8 various levels; the stimulating content that we
9 provide in our prime time programming.

10 There are genres that we offer for adults
11 that are not easily found on other networks. While
12 there are cable networks over the years that have
13 begun making a living off copying some of our more
14 population genres, there still is not very much to be
15 found off the top of my mind in the public affairs
16 area.

17 I think we are past masters in public
18 affairs, news, and documentaries. This is out of the
19 '98-'99 period, but just a couple of weeks ago, we had
20 that eight-hour Avoiding Armageddon mini series, which
21 was all about various forms of domestic terrorism.
22 And I don't see anything like that popping up.

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1 We do this kind of thing on a regular
2 basis. Others may do it every rare now and then. But
3 you take all of this together, and I think a Public
4 Television signal is really a necessity for the
5 business of the cable operator.

6 Q I wanted to go back just one more time on
7 the issue about children's programming, in particular.
8 At page 9, you say that 28 percent of all households
9 in the U.S. had children under the age of 12.

10 What relevance does that have in terms of
11 assessing the value of Public Television signals as
12 distant signals for cable operators?

13 A Well, it's the fact that a lot of their
14 customers, over a fourth of their customers, are going
15 to be keen on having the programming of Public
16 Television.

17 That's a -- it's a large market segment to
18 ignore. So I would think a cable operator would have
19 to have this content.

20 Q Let me ask you to turn to page 19 of your
21 testimony, please, Mr. Fuller. This is where you
22 discuss the survey presented or developed by WTBS. I

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1 wanted you to describe that survey, just the general
2 method, and discuss it a little bit. And then we can
3 drill down into some particulars.

4 A Okay. Well, I would like to say right off
5 the bat that the reason we have included this is
6 because it's not unlike -- I mean, it's an example of
7 any number of surveys that we have seen where PBS is
8 scored high on attributes and on program genres. And
9 this is just one example of it.

10 This was a study that was conducted with
11 about 1,200 cable subscribers. And the respondents,
12 these cable subscriber respondents, were asked to
13 indicate using a scale from -5 to +5, +5 being the
14 strongest degree of liking, how they felt about a list
15 of program types, genres, and program attributes or
16 channel attributes that was presented to them by the
17 researchers. And that's the methodology.

18 So they went through all of these and
19 scored each one of them. And then the WTBS
20 researchers were able to rank all of these attributes,
21 which is what is in our exhibit, from highest to
22 lowest score.

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1 Q And let me direct you now to that exhibit,
2 exhibit 11. Does this reflect the results?

3 A Yeah. This is what I was talking about.
4 These are the results.

5 Q Let's make sure we're all on the right
6 page. It's the fourth page in. Is that right, where
7 the results begin?

8 A Yeah. It's the stack of horizontal bar
9 graphs. That's what I'm looking at.

10 Q Okay. Mr. Fuller, if you could just talk
11 through what the various columns of information are
12 here?

13 A All right. Starting at the very left is
14 the ranking for each of these attributes or genres.
15 Then the attribute is described.

16 Q Let me ask you to pause there. So this
17 includes attributes and program types. Is that what
18 is reflected in this column?

19 A It's attributes and content types, I
20 should say.

21 Q So could you just give a few examples just
22 so we're all --

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1 A Sure.

2 Q -- on the same page in terms of tracking
3 it?

4 A Well, the very first one is an attribute,
5 high-quality programs, followed by limited commercial
6 interruption. Then you skip down through it. And you
7 can see programs about animal and wildlife at number
8 13. Number 15 is mystery shows. So those are
9 examples of genres. Nineteen, good, old-fashioned
10 programming, that's an attribute and so forth.

11 So there's this long list of these. So is
12 that enough or --

13 Q Yes.

14 A Now I'd like to hop around just a little
15 bit and say -- and remind everyone that this -- these
16 scores are based on that -5 to +5 scale that was
17 provided to the respondents. So they select a number.

18 They could have said, "Oh, good,
19 old-fashioned programming, I'd give that a -3" or
20 "Science programs, I'll give it a +5" or whatever.
21 Then they add them up and average. And the average
22 score is shown in that column that says, "Average

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1 attitude."

2 Then on the far right, the researchers
3 have grouped some of the scores and percentaged them
4 so that you can see how many people chose scores that
5 fell in these ranges of the scale. So, for example,
6 the percent that shows what the researchers call
7 unfavorable, which was any score from -5 to -3, you
8 can see the percent running down that column, like .3
9 percent.

10 The one in the middle they call the
11 neutral range, -2 to +2 and on the far right, the
12 percent that were considered to be favorable toward
13 that genre or attribute. And that's the +3 to +5
14 scale, 92 percent at the very top.

15 So then they took those three numbers,
16 just looking at the top row, .3, 7.7, and 92.0. And
17 they graphed it.

18 Q And those numbers you just read out, .3,
19 7.7, and 92.0, are for the first attribute, --

20 A For that first attribute.

21 Q -- high-quality programming?

22 A And they add to 100 percent.

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1 Q Okay.

2 A It's a distribution of those responses.
3 So, for example, high-quality programs, that long
4 black section of the bar graph is the 92.0 percent
5 that were favorable.

6 But if you then took all of the individual
7 scores, not -- forgetting the percentages for now,
8 just take the individual scores and average them.
9 That's the 4.3 that you see in the third column.

10 Q Okay.

11 A So that's how to read the tape.

12 Q So that in the shaded horizontal bar
13 chart, the darker bar that's over to the right-hand
14 side reflects the favorable?

15 A That's the favorable portion.

16 Q And the very dark shading which is on the
17 left-hand side reflects what?

18 A Unfavorable. And then the white portion
19 in the middle is, of course, the neutral section.

20 Q Okay. Could you just run through the top
21 rated attributes? Let's go one to ten and just
22 explain what those are.

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1 A Okay. I'll translate them because they're
2 abbreviated. The one at the very top is high-quality
3 programs.

4 The second is limited commercial
5 interruptions.

6 Third is programs the family can watch,
7 presumably together.

8 Number four is a wide variety of
9 programming.

10 Five is programs that make you think.

11 Six is programs with something for all.

12 Number seven is programs that keep you
13 informed presumably, including news programs.

14 Number eight is educational programming
15 for children. Nine is a predictable schedule.

16 Number ten is programs that are not
17 available on any of the networks. And by that, I
18 believe they mean the major networks, like ABC, NBC,
19 CBS, and Fox.

20 So those are the top ten. Then it goes on
21 from there.

22 Q And so the top-rated attribute, again,

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1 was?

2 A High-quality programs.

3 Q Let me ask you to turn back a page from
4 the bar chart to the narrative that precedes it. Is
5 this the narrative that the WTBS researchers produced
6 along with this study?

7 A Yes.

8 Q I wanted just to point you to the
9 discussion at the top of the second page of the
10 narrative. Does this also talk about the results?

11 A Yes, it does. Do you want me to
12 paraphrase it or read it?

13 Q Well, I just wanted to focus on the
14 sentence, "More than anything else, subscribers seek
15 high-quality programming." Do you see that?

16 A Yes, I do.

17 Q Is that accord with the conclusions that
18 are then shown in these bar charts?

19 A Oh, exactly, yes, the number one
20 attribute.

21 Q How do these attributes fit together with
22 Public Television?

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1 A They're very familiar to us. They're
2 largely the attributes that we get high scores for
3 whenever we have done surveys of our own asking to
4 have our channel rated as well as several
5 competitors'.

6 And we typically get the high scores for
7 most of these same attributes, certainly high-quality
8 programs and obviously limited commercial
9 interruptions, programs the whole family can watch, a
10 wide variety.

11 Programs that make you think is one of our
12 highest-scoring attributes, phrased a little
13 differently but the general idea; a program lineup
14 that has something for everyone; information through
15 news breaks, for example, like Maryland Public
16 Television does; and obviously educational programs
17 for children. So it's very similar to our own
18 findings and describes Public Television very well.

19 Q How is that relevant or how is the fact of
20 this survey relevant in terms of assessing the value
21 of a Public Television distant signal to cable
22 operators?

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1 A Well, again, it adds further support to
2 the necessity, I think, of having such a signal on
3 your cable system because of all of these sterling
4 qualities.

5 They are things that people have -- you
6 know, potential subscribers or current subscribers
7 have said they value. So, you know, as a business
8 proposition, you would obviously want to offer that to
9 your customers.

10 Q Mr. Fuller, when was this study done?

11 A It was done I think in '91. '91.

12 Q Could you explain whether these views
13 expressed by cable subscribers about their preferences
14 in terms of programming would still apply to the
15 1998-99 period?

16 A Well, this is -- these are views of
17 subscribers.

18 Q Right. Could you describe whether those
19 would still be applicable, in your judgment, during
20 the '98-'99 period?

21 A Oh, absolutely. I'm sure they would. As
22 I said, we see other data that corroborate this. And

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1 we have been seeing it year after year. And it
2 parallels this right up through '98 and '99 and into
3 the present. It's pretty stable.

4 MR. HESTER: Thank you.

5 JUDGE von KANN: This survey was presented
6 by the program suppliers in the '90 to '92 proceeding?

7 THE WITNESS: That's right.

8 MR. HESTER: That is correct, Your Honor.

9 Those are all the questions I have. Thank
10 you, Mr. Fuller.

11 THE WITNESS: Sure.

12 JUDGE YOUNG: You know, you just said you
13 saw the data. You have described some of the data
14 with respect to children's programming. What other
15 data are you referring to with respect to
16 non-children's programming that would support your
17 statement that this applies?

18 THE WITNESS: Well, one off the top of my
19 head is for a number of years, we have conducted an
20 annual survey that we paid to have done of Public
21 Television's image, among other thing, images,
22 preferences. And we asked a number of attributes in

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1 that survey. And they come out very similar to this.

2 JUDGE YOUNG: Is that a survey on -- what
3 is the survey?

4 THE WITNESS: Well, it's adults, 18 plus,
5 in the United States.

6 JUDGE YOUNG: Not necessarily PBS viewers?

7 THE WITNESS: No. It's all. There's no
8 filter on it. It's just adults, 18 plus, whatever
9 they -- whether or not they watch PBS, because we want
10 to know non-viewers think as well as viewers. It's
11 valuable to break them down that way.

12 MR. HESTER: Could I just follow up on one
13 point?

14 JUDGE von KANN: Sure.

15 BY MR. HESTER:

16 Q Mr. Fuller, I think there are sort of two
17 issues.

18 A Okay.

19 Q One is whether these attributes describe
20 Public Television. The second is whether these
21 preferences in terms of what cable subscribers want
22 would be applicable today.

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1 And I wanted you to address the second
2 point as well in terms of --

3 JUDGE YOUNG: That is where my question --

4 THE WITNESS: I see. Right.

5 MR. HESTER: I think that is where you
6 were going, Judge Young.

7 THE WITNESS: Okay. I am doing this from
8 memory, but my recollection is that in our annual
9 survey that I have told you about, we have a breakdown
10 for cable and non-cable households.

11 And my recollection is that the cable --
12 people who are cable subscribers have very similar
13 opinions to those who don't about Public Television.
14 It's strong. It's stable. It's been this way over
15 the years. So does that answer the question?

16 JUDGE YOUNG: Maybe I am getting a little
17 confused. You just made a statement in your
18 testimony. At footnote 19, you say, "Viewer
19 preferences have not significantly changed since the
20 TBS survey was conducted. The study still accurately
21 reflects those preferences."

22 And my question was the basis for that

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1 statement, specific as to what surveys or studies you
2 are referring to.

3 THE WITNESS: Well, okay. I guess I
4 wasn't clear. I am referring to these other studies
5 that we have had conducted on our own. Plus, there is
6 a survey that was conducted every year by the Roper
7 organization that asks attributes and taking those
8 together.

9 And our study, our image study, plus the
10 Roper survey -- and there may be others -- ask similar
11 questions to the WTBS study. And those findings over
12 the years have been pretty much the same. They have
13 not changed very much. That is what I am basing that
14 on.

15 JUDGE YOUNG: Okay. Thanks.

16 MR. HESTER: Thank you.

17 JUDGE GULIN: I actually have about five
18 minutes of questions. Maybe I will wait until after
19 the cross.

20 JUDGE von KANN: I think yesterday we
21 started with NAB, and Mr. Lazarus had only a couple of
22 minutes. But I see a rather large stack of paper in

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1 front of him today, which suggests to me he is going
2 to be longer. Is that probably right, he or you,
3 whichever one of you?

4 So why don't we break at this point for 15
5 minutes. And as to the consensus, we will follow the
6 same order as yesterday.

7 (Whereupon, the foregoing matter went off
8 the record at 10:39 a.m. and went back on
9 the record at 10:55 a.m.)

10 JUDGE VON KANN: Okay, Mr. Stewart.

11 CROSS EXAMINATION

12 BY MR. STEWART:

13 Q Good morning, Mr. Fuller.

14 A Good morning, Mr. Stewart.

15 Q I'm John Stewart and I'm representing the
16 Commercial Television Station Claimants in this
17 proceeding. And my goal actually is to ask all the
18 questions that the Sports and Program Suppliers
19 lawyers would ask, but in a more succinct fashion.

20 (Laughter.)

21 A I thank you for that, Mr. Stewart.

22 Q Would you turn, please, to page 6 of your

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1 testimony?

2 A All right.

3 Q Here at the top of the page you talk about
4 the regional interest of certain programs on public
5 television stations?

6 A Yes, I see it.

7 Q And to ask the other sort of, the other
8 side of the coin of a question that Chairman Von Kann
9 asked, the regional appeal effect is not limited to
10 public television stations, is it?

11 A No, of course not.

12 Q In fact, for commercial television
13 stations that produce programs that are local and
14 regional in appeal, those programs could also be
15 expected to have value in distant cable markets in the
16 same way that you describe here, correct?

17 A They would certainly have their own appeal
18 because of the regional nature. We make our own case,
19 of course, that we have a special type of programming
20 that's noncommercial and so forth. It has its own
21 particular appeal.

22 Q That's separate from the regional --

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1 A Well, it's an aspect of the regional.

2 Q By that, you're referring to the no
3 commercial interruptions, is that the --

4 A That's one, yes.

5 Q What are the others?

6 A Well, the content itself. If we have a
7 regional program produced, it's not going to be --
8 well, it could be a sports program, but more likely
9 it's going to be some informative or educational type
10 of programming.

11 Q Would you turn to Exhibit 10, please, of
12 the PBS file.

13 Do you have that?

14 A I have it.

15 Q This is an exhibit submitted in connection
16 with Mr. Wilson's testimony that identifies examples
17 of local and regional programming on PBS stations, is
18 that right?

19 A That's right.

20 Q And if you could just look at the first
21 one there, Lamar, Colorado. Do you know -- do you
22 happen to know whether KRMA or KTSC is carried as a

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1 distant station in Lamar, Colorado?

2 A I don't know off the top of my head.

3 Q Looking at the KRMA entry there, first
4 KRMA is from Denver, Colorado which is the largest
5 city in Colorado, correct?

6 A Denver?

7 Q Yes.

8 A Yes.

9 Q And they produced, first program listed
10 here is the State of Colorado program State Political
11 Coverage that airs twice in a week. Do you see that?

12 A I see it.

13 Q Now do commercial television stations
14 produce programs that provide coverage as to state
15 political affairs?

16 A I'm trying to think what I've seen. They
17 certainly produce local. And I don't recall with any
18 certainty about state coverage.

19 Q Do you think television stations in the
20 state capital cover events of -- political events
21 regarding state government?

22 A I would have to guess that that's probably

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1 true.

2 Q And do you know whether, for example, in
3 the next listing under KRMA, commercial stations also
4 produce programs about regional travel?

5 A I have no idea.

6 Q Looking at KTSC, do you know whether
7 commercial stations also create human interest
8 programs?

9 A Again, I don't know.

10 Q Let's flip to the next page and look at
11 the Ashford, Connecticut example that you have there.

12 Do you see that?

13 A I do.

14 Q Now the first listing under WEDH is for
15 Women's College Basketball, do you see that?

16 A Yes, I do.

17 Q Is that basketball games?

18 A Well, I'm not familiar with the program.
19 Just looking at it, I would think it would be, rather
20 than say a discussion of women's basketball, but I
21 truly don't know.

22 Q The next program under WEDH is listed as -

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1 - is described as a talk show with the women's
2 basketball coach broadcast in conjunction with each
3 game. Do you see that?

4 A I see that.

5 Q I assume the word coast in the title
6 should probably have been Coach Genome.

7 A I wondered about that too. I don't know,
8 unless that's her first name, right?

9 Q Could be. Are you aware of whether
10 commercial television has talk shows with sports
11 coaches, broadcast in conjunction with games?

12 A Yes, they do.

13 Q And this being an exhibit that talks about
14 local and regional programming, do you believe that
15 this -- these programs on WEDH would have some
16 particular appeal within the region in which the
17 stations carry it as a distant signal?

18 A You're asking if I think they would have -
19 - this WGBH program would have appeal say out in
20 Ashford, Connecticut as a distant signal?

21 Q WEDH.

22 A Oh, I beg your pardon. I'm sorry, then

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1 I've misunderstood you. Would you ask it again?

2 Q Do you think the two programs we just
3 discussed, college basketball games and the Coach
4 Genome Show would have appeal within the region in
5 which WEDH is carried as a distant signal?

6 A In the region, yes.

7 Q And perhaps not outside the region?

8 A Correct.

9 Q Now turning to the next page of Exhibit
10 10, you see the Rennselear, Indiana example there?

11 A I see it.

12 Q And under WTTW, the second program,
13 Chicago This Week, is described as a local new wrap
14 program that airs Friday nights, do you see that?

15 A I do.

16 Q Are you familiar with that program?

17 A No.

18 Q But it appears to air just once a week, is
19 that right?

20 A That's right.

21 Q Are you aware of whether WGN, for example,
22 from Chicago, produces and broadcasts news programs

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1 from Chicago?

2 A I don't know.

3 Q I want to just hand you a -- first of all,
4 is it your view that in the Rennselear, Indiana area
5 local news from Chicago, that program from WTTW would
6 be of value to the cable operators to subscribers?

7 A That particular program, the one called --
8 what was it, Chicago This Week?

9 Q Yes.

10 A I would think it would be. Again,
11 referring back to that example I gave earlier about
12 say Fredericksburg versus Washington, I don't really
13 know the area around Chicago and I don't know how far
14 away Rennselear is, but if it were not more than 50 or
15 60 miles as a distant signal, I would think sure,
16 people would be interested in what's going on in
17 Chicago.

18 Q In fact, that's part of the point you make
19 on page 6 of your testimony about the region appeal of
20 locally produced PBS programs, correct?

21 A Right.

22 Q I want to hand you, I'm sorry I only have

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1 one copy with me, an exhibit presented by the Public
2 Television Claimants which is PTB Exhibit 12-X which
3 is a program schedule for the national feed of WGN.
4 This is the program schedule that would appear to the
5 cable subscribers who receive WGN as a distant signal.

6 Would you confirm that there is WGN news
7 at noon on every weekday on that schedule?

8 A I see that, from 12 to 1.

9 Q And there's also another news program in
10 the evening, see that?

11 A Nine to 10 p.m.

12 Q It's a 9 p.m. WGN news program?

13 A Yes.

14 Q And there's also news on the weekends, is
15 that right?

16 A Yes, I see it.

17 Q WGN News at Nine as well?

18 A Uh-huh, Saturday and Sunday.

19 Q Now is there any reason from your
20 perspective that a daily news program from Chicago on
21 WGN as a distant signal would be any less valuable
22 than the WTTW once a week news program from Chicago?

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1 A You mean as a distant signal, is it
2 carried all over the country? I've never watched
3 their newscast. In fact, we don't get WGN on my cable
4 system. So I don't what they're putting in it.

5 If it were truly local Chicago news, it
6 would have no interest to me or I should think many
7 people all around the country, but if they recast the
8 content of the news so that it was more national in
9 scope, then that would have probably some appeal, no
10 matter the location within the United States.

11 Q Just for the moment, we're talking about
12 Rennselear, Indiana. You've raised Rennselear as an
13 example in which Chicago news on a distant PBS signal
14 would be of interest to the cable subscribers there,
15 is that right?

16 A Yes.

17 Q And my question to you is whether in the
18 same circumstances if WGN were a distant signal in
19 that system, WGN's local news from Chicago would be
20 similarly valuable?

21 A As I said, it depends on the content.

22 Q Okay.

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1 A If it's local content, regional content,
2 yes.

3 Q Okay, and by the way, do you know whether
4 it's typical for the evening news program on a
5 commercial station to air at 9 p.m.?

6 A That's not typical.

7 Q When is it typical?

8 A Typical is the first hour after prime
9 time. That's in the middle of prime.

10 Q And now looking back at Exhibit 10, you've
11 got a WYIN listed below WTTW, do you see that?

12 A I do.

13 Q And there again, you list live coverage
14 basketball games. Do you see that?

15 A I do.

16 Q And is that again likely to be of interest
17 within the region where the teams are located? Is
18 that the point of this listing?

19 A Well, I have to make an assumption and
20 that's that college basketball games are local
21 colleges and if that's the case, then the answer is
22 yes, it would have appeal, I should think, in

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1 Rennselear, local or regional colleges.

2 Q Okay, now the one above that, Hagerstown,
3 Maryland, do you see that?

4 A I do.

5 Q And you have -- this is the program, one
6 of the programs you mentioned in your testimony, the
7 arts program from WETA.

8 A There it is, Around Town.

9 Q Okay, and that you say is potentially
10 valuable to cable systems within the region where WETA
11 would be carried as a distant signal because it would
12 provide information to people who might travel to
13 Washington to attend one of these arts programs?

14 A Exactly what I said.

15 Q And now WWPB, do you know where that's --
16 I guess that station is Maryland Public Television's
17 Hagerstown transmitter.

18 A That's what it is.

19 Q Okay, first one is News Night Maryland, do
20 you see that?

21 A I do.

22 Q A regional news program that airs twice

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1 each weeknight. Are you familiar with that program?

2 A I've heard of it. I don't think I've
3 watched it.

4 Q Okay. Do you know how long it is?

5 A No.

6 Q Now again, and that is valuable to cable
7 operators because the cable operators where that's
8 received are in the State of Maryland, is that right?

9 A The cable operators where this station is
10 received are in the State of Maryland?

11 Q Yes.

12 A Well, there could also be some in
13 Pennsylvania as well or Virginia.

14 Q Would that program be of interest of
15 subscribers in either of those locations?

16 A As I said earlier, as long as it's not too
17 far away, you know, yes, it would be.

18 Q Okay, now by the same token, wouldn't it
19 be the case that news about events in the State of
20 Maryland from, for example, WJZ, a commercial station
21 in Baltimore would be of interest to cable operators
22 and subscribers in that region?

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1 A Yes.

2 Q Turning to page 9 of your testimony, you
3 talk there about children under 12, households with
4 children under 12 in 1999 representing about 28
5 percent of all households?

6 A Yes, I see that.

7 Q And why was that significant from your
8 perspective?

9 A Because it's a large segment of the
10 population and therefore should be of concern to cable
11 operators to address their interests as a business.

12 Q Now the children under 12 don't themselves
13 make the decision whether to subscribe to cable?

14 A No.

15 Q Have you done or are you aware of any
16 research about who the decision maker is with respect
17 to cable subscription?

18 A I don't think so. I don't believe I've
19 seen that.

20 Q In those cases, presumably, the head of
21 household, the parent would be responsible for
22 deciding whether to subscribe to cable and whether to

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1 maintain a subscription to cable?

2 A Yes, one or more, one or both parents.

3 Q Turning to page 19 of your testimony --

4 A All right.

5 Q There you talk about this survey done for
6 WTBS?

7 A That's correct.

8 Q And Exhibit 11 was a few pages from that
9 survey, correct?

10 A Correct.

11 Q I'd like to introduce as NAB Exhibit Demo.
12 9.

13 (Whereupon, the above-referred
14 to document was marked as NAB
15 98-99 Demonstrative 9 for
16 identification.)

17 A larger collection of excerpts from the
18 study itself.

19 (Pause.)

20 This was originally a cross examination
21 exhibit in the 1990 proceeding, when Mr. Sieber first
22 presented testimony about this study. It then was put

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1 in as a direct case exhibit number 4 by NAB in the
2 1990-92 case, so I don't know how -- what the record
3 will ultimately be about with exhibit labels, but
4 we've added number 3 here.

5 A Okay.

6 Q And this actually constitutes sort of
7 chunks of the underlying study itself, the report that
8 was provided to WTBS about which Mr. Sieber testified
9 and if you would just follow through with me,
10 unfortunately, the pages are not numbered, but there's
11 -- you can flip through the pages. There's a table of
12 contents, followed by a page labeled background and
13 objections, Section 1. The second page under that
14 describes the specific objectives of the research
15 project. Do you see that, it's labeled --

16 A I found it.

17 Q And the first three have to do with
18 acquiring information about TBS' perceived images,
19 strengths and weaknesses and so on. Do you see that?

20 A I do.

21 Q The fourth bullet is to determine what
22 viewers and nonviewers want and do not want from a

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1 cable network and the fifth and sixth have to do with
2 identifying gaps in the marketplace and potential
3 strategic recommendations for positioning TBS. Do you
4 see that?

5 A Right, I do see that.

6 Q Now then the next page is the methodology,
7 verbal methodology and the following page is labeled
8 at the top sample, do you see that?

9 A I see it.

10 Q Now this page describes what was -- the
11 sample that was purposefully selected for doing the
12 survey and the last paragraph on that page describes
13 the selection of a random sample, do you see that?

14 A I do.

15 Q It says that there was a quota of half
16 female, half male respondents. Do you see that?

17 A I do.

18 Q Would that be consistent with your -- do
19 you have any information about the extent to which
20 males or females make cable subscription decisions?

21 A No, I don't.

22 Q The next part of that paragraph describes

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1 how there was a restriction specifically on viewers
2 and nonviewers of TBS super station, do you see that?

3 A Yes, I see that.

4 Q And of the 1200, no more than 200 were to
5 be completed among nonviewers. Do you see that?

6 A I see it.

7 Q But how did they, how did this study
8 define a nonviewer of TBS super station?

9 A How did they define it?

10 Q Yes.

11 A Well, I haven't had the whole study and I
12 haven't seen the questionnaire.

13 Q It's in the last sentence.

14 A Well, the sentence itself says that no
15 more than 200 interviews were to be completed among
16 nonviewers. They use some screening process in their
17 interview to determine that.

18 Q Do you see the last sentence there that
19 says "viewers are defined as those who watch TBS
20 network"?

21 A Yes, I see that.

22 Q Once a month or more?

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1 A Once a month or more.

2 Q Now, that's not a typical viewing measure
3 per se, is it?

4 A Well, it's one type, which sounds to me
5 like a monthly come.

6 Q That's right and it's not a rating or a
7 share and doesn't reflect the measure of average
8 quarter hour audience on WTBS, correct?

9 A Apparently not. It must be just a simple
10 act of having seen say one quarter hour of viewing in
11 the course of a month.

12 Q That is --

13 A Or one instance of viewing.

14 Q If you ever watch in the course of a
15 month.

16 A Yes.

17 Q Okay, now flipping further pages and I'm
18 going to get to my questions in a moment. We have
19 another table of contents and Roman numeral IV, market
20 profile service, total respondents and some other
21 pages and finally you get to a page that's labeled
22 roman numeral IV-1 in the upper right hand corner. It

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1 says key to abbreviation for attributes. Do you see
2 that?

3 A It's Roman numeral IV-6 in the upper right
4 hand corner?

5 Q IV-3 is the beginning of that. There are
6 two different listings.

7 A I see. Okay, I'm with you.

8 Q Okay, and these are the actual
9 questionnaire wordings on the right hand side that
10 relate to the program attributes that you presented in
11 Exhibit 11?

12 A Right.

13 Q Now, looking back now at your Exhibit 11
14 which is also reproduced in this demonstrative 9,
15 these program attributes, the full text of which is in
16 the exhibit, were simply asked of each of these
17 respondents in terms of their preferences and what
18 they wanted from a television station or a cable
19 network, is that right?

20 A That's right.

21 Q The ranking that you show in Exhibit 11 is
22 weighted by how much unfavorable, how much favorable

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1 each attribute collected, right?

2 A Well, I wouldn't use the term weighted,
3 but that's the way it's displayed and the average
4 score is shown.

5 Q Okay.

6 A Weighting has another meaning.

7 Q It's referred to as weighted up there at
8 the top of the page, but yes, that is --

9 A That refers to the sample itself was
10 weighted.

11 Q Okay.

12 A On other variables like demographics or
13 something.

14 Q Okay. Now there wasn't a specific
15 identification of PBS station attributes, correct?

16 A No.

17 Q The attributes are simply neutrally
18 described and your testimony is that a number of them
19 match up with public television programming in your
20 perspective?

21 A That's right, there's a lot of familiarity
22 and similarity.

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1 Q Some of these also, however, match up with
2 commercial television programs as well, correct?

3 A When you look down the list, yes.

4 Q For example, programs that make you think
5 could apply to public affairs programs or
6 documentaries produced by commercial stations as well
7 as noncommercial stations?

8 A Well, that depends on the program. There
9 are a lot of them posing as documentaries that are, in
10 my opinion, very shallow, so it would depend on the
11 program.

12 Q It's not your testimony that there is no
13 program on commercial television that doesn't make you
14 think, is it?

15 A It's not.

16 JUDGE VON KANN: How many negatives in
17 that sentence?

18 (Laughter.)

19 BY MR. STEWART:

20 Q The Panel is presented with a couple of
21 examples of commercial television station produced
22 programs, one of which was a documentary about the

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1 gold rush in Sacramento. You have no reason to
2 believe that that wouldn't be deemed a program that
3 makes you think, would you?

4 A Treatment is everything and I have seen
5 programs that ought to make you think make you go to
6 sleep, so I just can't answer that.

7 Q Well, you can't be too cynical. That
8 would apply to sometimes --

9 A I take your point.

10 (Laughter.)

11 Q Yet the attribute would keep you informed
12 through newsbreaks could apply to newsbreaks on
13 commercial television stations?

14 A Yes, absolutely.

15 Q And there are some programs on commercial
16 television, locally produced programs for children
17 that are educational, correct?

18 A On commercial -- locally produced --

19 Q Commercial television, local produced
20 programs for children that are educational?

21 A In recent decades, I can't recall seeing
22 any. There was a time when every station had a

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1 children's program. I worked for one. And I just
2 haven't seen any in recent years. If there are any,
3 I've missed them. I'm not aware of them.

4 Q Late night news could apply to late night
5 news on commercial television stations?

6 A Oh sure.

7 Q Now and documentary programs, if it's a
8 documentary produced by a local television station,
9 local commercial television station, that could apply
10 as well?

11 A It could and there are some here and
12 there.

13 Q Okay, now if you go down the list to
14 attribute 57, I'm sorry, 56.

15 A Repeat seeing episode, is that what you're
16 looking at?

17 Q Right. Do you see that?

18 A I do.

19 Q And that didn't get such a high average
20 rating?

21 A That's right.

22 Q And if you look at the actual

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1 questionnaire wording that repeats the same episode of
2 a show at several different times?

3 A Yes, well I think that's the individual
4 responding for himself. I don't think a person would
5 want to watch the same program twice unless it's
6 Seinfeld.

7 (Laughter.)

8 As I said earlier, I was referring to
9 household duplication, but proceed.

10 Q Okay, number 51, just above that it shows
11 a lot of sports, do you see that?

12 A Uh-huh.

13 Q And that actually got higher unfavorable
14 ratings than all but 10 or so of the program
15 categories?

16 A Yes, it did.

17 Q Seinfeld was on the network in 1998,
18 correct?

19 A Yes.

20 Q So it didn't count for these proceedings
21 in its network versions?

22 A I don't think so.

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1 Q We'll find out. We're going to have more
2 questions rather than fewer, I'm sorry.

3 A I dug myself a hole.

4 Q Going back to NAB's exhibit demonstrative
5 number 9, if you -- page 4-12 is the --

6 A That's that graph?

7 Q Is the graph that's part of your Exhibit
8 11. I want to flip further back in the document.
9 There's another section called factor analysis of
10 attributes and several pages back, page Roman numeral
11 IV-18, there's a report of the results of this
12 separate analysis, do you see that?

13 A I do.

14 Q And this was essentially taking a number
15 of the individual attributes and collecting them
16 together around specific concepts.

17 A That's the factor analysis process. It's
18 a statistical data reduction process to put attributes
19 into clusters based on the way respondents kind of see
20 them similarly or choose them in groups.

21 Q Okay, and I'm going to assume that you
22 feel comfortable saying first, in terms of -- these

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1 are ranked in descending order of average importance.
2 Do you feel comfortable saying that the first is
3 variety of programming, that reflects -- that's a PBS
4 attribute in your --

5 A Yes, it is.

6 Q Might it also be an attribute of
7 individual commercial television stations?

8 A There certainly is variety on individual
9 commercial stations. We just feel that we have a
10 wider variety. That's why we make that statement.

11 Q The next concept is defensible quality and
12 that's something you've talked about before with
13 respect to public television?

14 A Yes.

15 Q The next concept in order by average
16 importance is news. Do you see that?

17 A I do.

18 Q And with respect to news, it is the case,
19 is it not, that commercial television stations provide
20 more newscasts, more news programming than public
21 television stations?

22 A That's true.

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1 Q The Jim Lehrer Report is, in effect, the
2 network news program -- what's it called, the
3 Newshour?

4 A It's the Newshour with Jim Lehrer. It's
5 one hour Monday through Friday. And it's network,
6 national.

7 Q Okay.

8 A Some stations do local news, but they're
9 in the minority.

10 Q Now this whole study does not, is not a
11 measure of the amount of viewing done by these people
12 of various program types, is that right?

13 A I'm sorry, ask that again.

14 Q This whole PBS study is not a measure of
15 viewing, the amount of viewing done by people?

16 A No, it's not.

17 Q It instead asks for impressions or
18 preferences or the like?

19 A Yes, it's attitudes and preferences,
20 basically.

21 Q Do you think that that is an appropriate -
22 - do you think that that's relevant to the question of

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1 value of program, distant signal programs in the
2 commercial marketplace?

3 A I think it's extremely germane because
4 that's the kind of information that's going to cause
5 a person to subscribe to a cable system or not and
6 that's what the cable operator ought to be depending
7 upon is whether he or she is providing these very
8 things that we see in this survey because that's what
9 people value.

10 Q Would you turn, please to Exhibit 25 --

11 JUDGE GULIN: Tell you what, before we
12 leave this survey, let me ask you to take a look at
13 number 59 which is programs containing adult themes
14 and sex and number 63, programs containing violence.
15 They rank so low that they're actually negative. Now
16 last time I watched television there's an awful lot of
17 that stuff. What does that -- I mean I would assume
18 that the networks don't put this stuff on because they
19 think nobody wants it and nobody is watching. What
20 does that tell you about this survey?

21 THE WITNESS: I certainly don't think that
22 it devalues what we're seeing here. This is what

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1 people tell you and in the case of something like
2 program adult themed sex, most people may feel that
3 way and apparently they do according to this survey,
4 but you just need so many to make a program valuable.
5 I'm trying not to sneeze.

6 JUDGE GULIN: You can take a break and
7 sneeze if you want to.

8 (Laughter.)

9 THE WITNESS: I'll try not to. And of
10 course, the people who -- the cable systems who offer
11 adult program material for pay don't need very many to
12 make a lot of money, you know, so there's -- this
13 really isn't relevant in that case, I don't think, in
14 a pay television.

15 Programs that contain violence, again that
16 depends on what you mean by violence. People say
17 this, but what you see on television is not that
18 violent. They tend to talk about it a lot, but they
19 don't show it that much.

20 JUDGE GULIN: I guess maybe you're making
21 a little bit of my point is you give a survey like
22 this to people. Who's not going to say they want high

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1 quality programs? By definition, that's going to be
2 -- almost predicts the result before you even ask the
3 question that whatever is high quality to a particular
4 person is what they're going to say they want to see.

5 THE WITNESS: Yes, yes.

6 JUDGE GULIN: I don't think there are too
7 many people, I know I wouldn't, if I got a call and I
8 was asked do you want more sex on TV? I'm not going
9 to say yes. So in some sense --

10 JUDGE VON KANN: Well, if he does is that
11 the issue?

12 (Laughter.)

13 JUDGE GULIN: So I guess in that sense,
14 isn't it kind of the point is that a lot of this is to
15 be quite expected. I'm not sure that --

16 THE WITNESS: Well, there are certain of
17 these attributes and in any type of an attribute
18 survey, some that are easier for respondent to answer
19 than others, that's true. And certainly people are
20 going to say they want high quality programs. I agree
21 with that.

22 JUDGE VON KANN: Is this the mom and apple

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1 pie syndrome that some of these things are framed in
2 a way that people would be ashamed not to subscribe
3 to, but may or may not reflect their actual viewing
4 habits?

5 JUDGE GULIN: I guess to some people, high
6 quality programming could be watching the Cubs all day
7 long, right?

8 JUDGE VON KANN: A limited number, but
9 loyal.

10 JUDGE YOUNG: I want to pick that up from
11 where I thought Judge Gulin was going. I was watching
12 TV last night and I could name you two or three
13 programs I watched where there was a lot of shooting.
14 One program, NYPD Blue, there was a sexual scene at
15 the end. So obviously, somebody is making a judgment
16 that we want to watch that.

17 THE WITNESS: Yes.

18 JUDGE YOUNG: I want to pursue that
19 because that seems an interesting point. Does that
20 mean that nobody really listens to this -- these kinds
21 of surveys?

22 THE WITNESS: No, no. It's -- these

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1 particularly -- you all have singled out some subject
2 areas that are what researchers call loaded. They
3 have another dimension to them like you don't want to
4 admit to the interviewer that you do like sex or you
5 don't want quality or whatever. That's a phenomenon
6 that all researchers have to deal with and take into
7 account. And I truly don't believe that that renders
8 the whole survey worthless if that's the question.
9 It's just that there are certain items that do have
10 those effect aspects to them.

11 Yes, there is some sex portrayed in prime
12 time television. It's talked about a lot on NBC's
13 Friends, for example. And yes, NYPD Blues will
14 sometimes slip in a cheek or something.

15 JUDGE YOUNG: Actually, last night it was
16 more.

17 THE WITNESS: It was more. Okay. So
18 that's -- is that a sufficient answer?

19 JUDGE YOUNG: Well, let me just take one
20 more step. This is not reflective of the anecdotal
21 experience I had, but I do have a sense that some of
22 these reality TV programs and there's a lot more sex

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1 than you're giving credit to.

2 THE WITNESS: Well, I'm not sure what else
3 I would say other than what I've said already is that
4 the way people answer in a survey on certain loaded
5 items that are sensitive could be different from their
6 actual behavior.

7 JUDGE YOUNG: What's also interesting
8 about this is looking at Demo. 9 and looking to that
9 Roman IV-4 or Roman IV-3 that Mr. Stewart had directed
10 us to, the descriptions of program adult theme/sex on
11 Roman IV-4 seems to be taking pains to not to sort of
12 hint that we're talking about hard core. It seems to
13 be talking a little softer. Similarly, programming
14 containing violence seemed to be a little softer.

15 THE WITNESS: I understand. And my answer
16 is the same. I think some people may just not feel
17 comfortable admitting to that during a telephone
18 survey.

19 JUDGE YOUNG: I will also point out on
20 Masterpiece Theater on Sunday night, PTB had the --
21 there were two or three sexual situations on that show
22 as well.

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1 THE WITNESS: I'm sorry I missed it.

2 (Laughter.)

3 THE WITNESS: I understand what you're
4 saying, thank you.

5 BY MR. STEWART:

6 Q Mr. Fuller, just following up on this a
7 bit, is there a difference in your view between the
8 economic incentive in the marketplace and commercial
9 network mass market programming on the one hand and on
10 the other hand cable operators who sell packages of
11 channels to subscribers?

12 A I'm not sure I understand. Could you ask
13 it another way?

14 Q Is the amount of viewing done to programs
15 with sex or violence in them on national commercial
16 television networks relevant from an economic
17 perspective to the national networks?

18 A Well, never having worked at one of the
19 national networks, I don't know. I don't know whether
20 they had proof that it does matter. They apparently
21 think it does because they include it in some
22 programs.

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1 Q Well, to the extent that whatever series
2 of program attributes on the commercial network of
3 programs attracts large audiences, that's potentially
4 the source of large advertising revenue for the
5 commercial networks, correct?

6 A If it has a large audience, if that's what
7 you're saying. However, they manage to get it, yes.

8 Q The cable operator -- does the cable
9 operator get additional revenue if an audience to a
10 program involving sex or violence turns out to be very
11 large?

12 A No, no, it's not related.

13 JUDGE GULIN: On the other hand, some of
14 the most expensive and valuable programming on cable
15 would be HBO, Showtime which has the most sex and
16 violence, correct?

17 THE WITNESS: That's what I've heard. I
18 haven't seen. I don't subscribe, so I'll have to take
19 your word for it. I've heard that.

20 BY MR. STEWART:

21 Q Turning to Exhibit 25 attached to your
22 testimony. Wold you explain to me first what the --

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1 the 1.9 for PBS means there?

2 A That's a household rating calculated in
3 prime time during the 1998-1999 PBS television season.
4 So it means 1.9 percent of all U.S. TV households were
5 watching PBS during that period in that day part.

6 Q Now in looking at the 0.7 for cable
7 network news, CNN, what does that mean?

8 A That's calculated the same way. The 0.7
9 percent of all TV households were watching.

10 Q So you took the viewing to CNN which was
11 only in cable households and divided it by the total
12 number of television households, whether or not they
13 had cable?

14 A Yes. That's the way we compare ourselves
15 to all competitors just to put them on equal footing.

16 Q Okay, now if you were to adjust that for
17 the fact that CNN is not available to the non-cable
18 households among all U.S. TV households, you would
19 have a higher --

20 A it would go up a little.

21 Q In fact, there are roughly 100 million,
22 there were in 1999, 1998-1999, roughly 100 million

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1 television households in the United States?

2 A That's about right.

3 Q Do you know how many cable households CNN
4 was in?

5 A I don't know precisely. I would assume it
6 was around -- cable households would probably be 65
7 million.

8 Q Let me show you actually --

9 A Kagan?

10 Q Which is Kagan Economics Basic Cable
11 Networks 2003. Are you familiar with this?

12 A I'm familiar with the company, I don't
13 have that book.

14 Q I'll just show you the first table that's
15 labeled "Cable Network TV Household Penetration."

16 Down at the bottom they have total
17 multichannel households and below that U.S. TV --

18 A Households.

19 Q Oh no, that's not the number that I was
20 looking for.

21 (Pause.)

22 Here we go. This is the page here. It

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1 shows U.S. TV households in millions for the various
2 years covered by this report and its 99 and some for
3 1998 and 100.8 for 1999.

4 A So for the two it's about 100.

5 Q About 100. And then I'm going to turn to
6 the -- we have it right here. There's CNN and that
7 shows you the number in millions of cable households
8 receiving CNN in 1998 and 1999 and what are those
9 numbers?

10 A Well, just a moment, let's be clear
11 because I'm not sure that this is cable penetration.
12 I see Kagan is using the term multichannel which would
13 include DBS, could it not?

14 Q Okay.

15 A Let me find it. So whatever this
16 statistic is, Kagan is not great about labeling
17 things. I see about 76 to 77.

18 Q Okay, million.

19 A Million.

20 Q PBS is available essentially to all --

21 A Ninety-nine percent.

22 Q Of television households in the U.S.,

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1 cable and non-cable?

2 A Yes, all TV households.

3 Q So the 1.9 prime time average audience
4 rating is 1.9 percent of all those 100 million
5 households?

6 A That's right.

7 Q So if you wanted to just adjust the 0.7 to
8 make it comparable, in effect, within the universe to
9 which CNN is available which is not 100 million
10 households, it's more like 75 million households, you
11 can just do an arithmetic computation to get a number
12 that's comparable, is that right?

13 A Well, it depends on point. We calculate
14 them this way because we think this is fair because it
15 represents truly the 7/10ths of one percent of all
16 households.

17 You know what it means without knowing
18 anything about the penetration of the cable network
19 which is irrelevant to us. But if you wanted to make
20 the adjustment you describe, yes, it would go up what,
21 maybe 25 percent. So it might be closer to 1.0 if you
22 did that adjustment.

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1 Q Okay, and just one other clarifying point.
2 In your Exhibit 16, in the far right hand column there
3 you've got total cable subscribers?

4 A Yes.

5 Q That's total form 3 cable subscribers?

6 A That's correct.

7 Q The total number of cable subscribers has
8 got to be more in this period, more than 75 million or
9 so which is how many households, cable households CNN
10 is in, or do you know the answer to that?

11 A You mean the actual number of cable
12 households during this period?

13 Q Right, it's more than 60 million, isn't
14 it?

15 A It would be a little more than that, yes,
16 probably closer, if I'm remembering correct, it's
17 probably closer to 68 million.

18 Q I have no further questions, thank you.

19 JUDGE YOUNG: Let me pursue one point when
20 Mr. Stewart was talking. He asked you about your
21 statistic that 28 percent of all TV households have
22 children under 12?

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1 THE WITNESS: I remember.

2 JUDGE YOUNG: Do you know if that
3 statistic has changed over time so that in 1990-92, a
4 higher percentage of TV households had children under
5 12?

6 THE WITNESS: That's -- you're talking
7 about the change in the population over time.

8 JUDGE YOUNG: Right.

9 THE WITNESS: And I don't recall whether
10 the proportion has changed. I know it hasn't changed
11 much because it's a very long slow trend over decades
12 and there was a time when the birth rate had gone down
13 like in the early 1980s, I think it was much lower and
14 we began over time, we began to see the persons per
15 household ratio going down and then in recent years
16 it's reversed a little bit. That's as much as I can
17 remember, really about the trends in the population
18 where people been having more children during the
19 last, I think, 5 to 10 years, but I don't recall
20 whether that particular percent has changed very much.

21 JUDGE YOUNG: What you just said about
22 possibly a phenomenon of people having more children

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1 probably is not relevant to this particular statistic
2 because whether a particular household that has
3 children under 12 has more may be relevant. I'm sort
4 of thinking of the fact that we talked about yesterday
5 that the baby boom generation is getting older and if
6 the baby boom generation was a spike in population
7 post war into the 1950s, and if that group is getting
8 older, presumably that group, their kids are now over
9 12.

10 THE WITNESS: It gets complicated because
11 the population trends, they have these funny cycles
12 and after the baby boomers, there was a boomlet they
13 call it where there was things, the number of new
14 births I think went down and then it began to come
15 back up again. But I just can't work this through
16 with you very easily right here without some
17 population data.

18 I think it's all fairly minor as far as
19 these percentages are concerned.

20 JUDGE YOUNG: You mean the variations over
21 time?

22 THE WITNESS: The variations over time.

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1 They're really over a long period of time. Not huge
2 variations in any event.

3 There might be to demographers and to
4 people who sell to those groups, you know in terms of
5 absolute terms, but not as a percent.

6 MR. STEWART: You may now understand the
7 strategic purpose of that thing on the videotape that
8 said PBS gives you a better sex life.

9 THE WITNESS: We alone are responsible for
10 the boomlet.

11 (Laughter.)

12 MR. TUCCI: Your Honor, it's going to take
13 us about five minutes to move all of our stuff up
14 there. I know it's a little bit early for the break,
15 but in the interest of efficiency, you may want to
16 consider doing that now.

17 JUDGE VON KANN: All right. Why don't we
18 come back at whatever it looks like -- about a couple
19 minutes before 12 and then let you have an hour and
20 let us all have an hour.

21 (Whereupon, the proceedings in the
22 above-entitled matter went off the record at 11:44

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1 a.m. and resumed at 12:00 a.m.)

2 JUDGE von KANN: Okay. Mr. Tucci.

3 MR. TUCCI: I'm ready. I'm ready.

4 CROSS EXAMINATION

5 BY MR. TUCCI:

6 Q Mr. Fuller, my name is Michael Tucci, and
7 I represent the Program Supplier category in these
8 proceedings. I apologize at the outset because I
9 guarantee you I'm going to call you Mr. Wilson at some
10 point during the day, and don't take it as an offense.

11 A That's all right.

12 Q Because it's fresh in our mind, I think
13 I'll start with the Sieber testimony. Mr. Sieber
14 worked for WTBS. Is that correct?

15 A That's right.

16 Q Okay. And he presented testimony in the
17 1990-1992 proceeding surrounding this survey that
18 we've been discussing. Right?

19 A Yes, that's my understanding.

20 Q Okay. Now we've designated Mr. Sieber's
21 testimony as part of this record, but just for the
22 sake of completeness in our discussion today, we're

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1 handing out PS Demo Exhibit number - I think it's 7.
2 It's 6. PS Demo 6. Okay.

3 MR. TUCCI: We'll identify it for the
4 record. It's the conclusion of Mr. Sieber from the
5 1990-92 testimony that he provided in these
6 proceedings.

7 (Whereupon, the above-referred
8 to document was marked as PS
9 Demo 6 for identification.)

10 BY MR. TUCCI:

11 Q Have you seen this before?

12 A No.

13 Q Okay. Mr. Sieber concluded, did he not,
14 "It is not coincidence that Turner Broadcasting became
15 a leader in the development of cable television
16 audience research, as WTBS becomes TBS Superstation.
17 Audience research was the foundation on which
18 programming decisions were made. Those decisions were
19 made to attract and keep subscribers interested in
20 receiving TBS. Our success in making those decisions
21 is shown by the widespread carriage of TBS and the
22 relatively high ratings that TBS continues to enjoy."

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1 The next two paragraphs are sort of the
2 essence of his conclusion, I believe. "Television
3 ratings tell us to what extent and how subscribers use
4 our program. Viewing is, after all, the end-use of
5 our product. Ratings supply the link between
6 programmer and subscriber, the end-user of our
7 product. While attitudinal studies tell us about the
8 why of subscriber behavior, ratings tell us what that
9 behavior is. Many new cable channels have been
10 offered based on stated subscriber preferences and
11 failed. Those that have lasted and succeeded are
12 those that receive the largest ratings. My testimony
13 relies on the same research tools that I developed for
14 TBS Superstation, and that were used in 1990 to make
15 programming purchasing and scheduling decisions. The
16 research underscores the value of syndicated
17 programming to subscribers all around the country
18 based not only on stated preferences, the why of their
19 behavior, but also on the ratings that confirm that
20 those preferences were translated into viewing
21 activity. By all those measures, syndicated
22 programming is far and away the most valuable

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1 programming available to TBS and other cable
2 programmers in building their subscriber-base and
3 keeping it."

4 Now this is the conclusion he reached,
5 notwithstanding the survey that you were talking about
6 this morning. Right?

7 A Uh-huh.

8 Q Did you know --

9 JUDGE von KANN: Is that a yes?

10 THE WITNESS: That's a yes.

11 BY MR. TUCCI:

12 Q Okay. Do you know whether prior to the
13 survey, let's say, what the predominant program
14 category that existed on TBS was?

15 A No, I don't.

16 Q Okay. Would it surprise you to learn that
17 it was syndicated programs and movies?

18 A No.

19 Q Okay. Do you know whether TBS changed any
20 of its programming line-up to any significant degree
21 as a result of the subscriber study that you testified
22 about?

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1 A I don't know. No idea.

2 Q Do you know that TBS is now no longer
3 WTBS, the distant signal, but is TBS, a cable network?

4 A Yes, I've heard this.

5 Q Okay. Do you know whether TBS generates
6 more income as a cable network versus a distant
7 signal?

8 A I don't know that.

9 Q If we look to its revenues or its behavior
10 in the marketplace, we could determine whether the
11 marketplace accepts programming, if you will, or what
12 the marketplace value of that programming is, couldn't
13 we?

14 A I'm sorry. Say that one more time.

15 Q Okay. If we look at TBS revenues, we
16 could look to TBS revenues to determine whether or not
17 it's a successful organization, couldn't we?

18 A Yes.

19 Q Now have you ever worked for a cable
20 company?

21 A No.

22 Q Okay. So I guess you have no personal --

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1 you never bought syndicated programming I guess on
2 behalf of a cable company since you've never worked
3 for one.

4 A Not on behalf of a cable company, I have
5 for a station.

6 Q Okay. And that was 25 years ago, is that?

7 A Yeah, about.

8 Q Okay. I think your testimony states that
9 your job is to interpret audience data and trends. Is
10 that right?

11 A That's part of it, yes.

12 Q Okay. How big is the research department
13 at PBS?

14 A Eight people.

15 Q Okay. Has it grown over the years?

16 A A little. It was seven people when I came
17 to PBS, and it's eight now. That's it.

18 Q Do you generate any --

19 JUDGE von KANN: Are you done with the
20 Sieber business?

21 MR. TUCCI: Yes.

22 JUDGE von KANN: Let me ask a follow-up,

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1 if I can, while it's fresh. I'm a little confused
2 now, and maybe you can help me, Mr. Fuller. I don't
3 know whether you've had occasion in preparing for this
4 testimony to go back and review Mr. Sieber's full
5 testimony and report from a prior proceeding. Have
6 you had that opportunity?

7 THE WITNESS: No, I haven't. I've just
8 read a few pages.

9 JUDGE von KANN: I guess the thing that
10 I'm a little confused about, if you know the answer,
11 fine. If not, someone else will probably tell us as
12 we go along. The conclusion that you were just shown
13 in PS Demo 6, as I read it, it sort of tends to say
14 attitudinal studies are fine, but the proof is in the
15 pudding. Let's really look at the ratings and see what
16 people are doing. Is that the way you sort of read
17 this conclusion?

18 THE WITNESS: That's the way this is
19 written, yes.

20 JUDGE von KANN: And, of course, the study
21 that you've been pointing to is, or the survey is, as
22 I understand it, an attitudinal survey, an interview

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1 survey.

2 THE WITNESS: It is.

3 JUDGE von KANN: Now is there other
4 material in this report? I just skimmed it, and I
5 didn't see much in the way of rating results, but
6 maybe I missed it. So I'm having a little disconnect
7 between the conclusion that says you shouldn't get
8 overly influenced by interview studies, and then a
9 report that seems to be grounded on an interview
10 study.

11 THE WITNESS: That surprised me, as well.
12 I can't figure out why that was brought in.

13 JUDGE von KANN: Okay.

14 MR. TUCCI: The entire testimony -- again,
15 the entire testimony has been designated for the
16 record. And there are some discussions in there about
17 ratings, and you have to understand, as well, that it
18 was presented in conjunction with the Program
19 Suppliers case which contains much more information
20 about ratings at that time.

21 JUDGE von KANN: Okay.

22 MR. HESTER: Could I ask you for a

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1 clarification. In this conclusion, this PS Demo 6,
2 this is the conclusion from Mr. Sieber's written
3 testimony?

4 MR. TUCCI: Correct.

5 MR. HESTER: So it's not the conclusion to
6 the study.

7 MR. TUCCI: It's the conclusion to the
8 written testimony that included the study as part of
9 it.

10 JUDGE von KANN: I guess what we've got,
11 and I'm just guessing here, is we've got Sieber giving
12 testimony, probably part of -- maybe an exhibit to
13 that testimony was this survey and maybe other things
14 or other exhibits. And then this is his overarching
15 conclusion. Okay.

16 MR. TUCCI: And again, I think this is one
17 thing that has been designated in its entirety by
18 several Claimant Groups to be honest with you.

19 JUDGE von KANN: Okay. All right. Thank
20 you.

21 MR. TUCCI: Uh-huh.

22 BY MR. TUCCI:

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1 Q We were talking about your department in
2 PBS. Are there any regular reports that are generated
3 by your department?

4 A Yes. We produce a number of audience
5 reports.

6 Q What are they called?

7 A Well, there are different ones. We do a
8 daily overnight report based on the local market
9 overnight ratings. We do lots of audience analysis.
10 We do a national audience report on a quarterly basis
11 based on national Nielsen ratings. We do an annual
12 cable audience report based on cable ratings, compared
13 with PBS and so forth. I mean, those are some. Plus
14 we do custom reports, as requested.

15 Q Okay. And who do you send these reports
16 to?

17 A To the stations, to our producers, to our
18 management, just about anybody who requests them on a
19 per inquiry basis.

20 Q I see. Is there a regular distribution of
21 these reports? Like say the overnights, for example?

22 A Yes, there is. It's an internal list.

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1 Q And is there a -- and what's the next
2 regular report that's generated by your department?
3 Is there a weekly report, or a monthly report?

4 A There are monthly reports. I write a
5 monthly report, which is internal.

6 Q So there's more than one monthly report.
7 Is that --

8 A Actually, there are some other monthly
9 reports. We generate a monthly report on children's
10 ratings. There's a monthly report that -- these are
11 just simple e-mail reports that summarize what our
12 prime time rating has done. Actually, that's a
13 quarterly. I take that back. But the one I write for
14 management is a monthly report.

15 Q Do you include in these reports -- I think
16 you've already stated that you include ratings
17 information. Right?

18 A Sure.

19 Q Okay. Do you include any demographic
20 information in these reports?

21 A Many of them, yes.

22 Q Okay. What kind of demographic

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1 information is included, just in general?

2 A It's very comprehensive. We look at all
3 the variables that Nielsen provides.

4 Q Do you look at ratings by demographics?

5 A Yes.

6 Q Do you use Nielsen demographics as -- do
7 you use the same demographic categories as Nielsen
8 does?

9 A Yes.

10 Q Do you provide any of these reports to
11 underwriters?

12 A Yes, we do.

13 Q Okay. Is that on a regular basis?

14 A It's on an as-needed basis.

15 Q Are you asked on occasion to provide
16 reports in conjunction with staff efforts to secure
17 underwriting?

18 A Yes. We regularly do that.

19 Q Is that like once a day?

20 A No. No. It's a regular means. In the
21 course of a month, maybe two to four times, perhaps.

22 Q And are you asked to -- I take it from

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1 your testimony that you're asked to provide that in an
2 effort to secure underwriting. Is that right?

3 A That's correct, yes.

4 Q And do you do follow-ups with particular
5 underwriters to see how audiences are responding to
6 particular programs?

7 A Sometimes. Some want to know that, and
8 some do not.

9 Q Now turning to some of the specifics in
10 your testimony, we talked about this a little bit this
11 morning, but I'm going to make sure that I'm clear
12 because I'm not the brightest bulb in the room. We
13 had -- if we look at your Exhibit 16, I think is what
14 it is.

15 A Uh-huh.

16 Q We can tell the number of subscriber
17 instances for particular years - right - or total
18 cable subscribers if we look in the right-hand column.
19 Right?

20 A Yes.

21 Q Okay. And --

22 A Form 3.

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1 Q Form 3. Right. And we can figure out how
2 many PTV subscribers there are if we add up these
3 columns. Right? The first one, second and third.

4 A With a distant signal.

5 Q With a distant signal.

6 A Yes.

7 Q Thanks. And if we look -- just take the
8 one in the middle. We've got 98-2, the reporting
9 period. And I added those up, and I think I did it
10 correctly and it came out to 5,939,000 roughly.

11 A What were you adding?

12 Q The three columns for 98-2, subscribe
13 whose first signal is --

14 A Adding across.

15 Q Adding across. That's right.

16 A Okay.

17 Q I'm sorry. And we have 58,495,000 in 98-2
18 total subscribers.

19 A Yeah.

20 Q So my addition of 5.9 million is roughly
21 10 percent, a little bit over 10 percent.

22 A That's what we got too.

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1 Q Okay. And the bullets on page 2 of your
2 testimony, I think that you break them down into two
3 categories. One of -- the first bullet is the
4 households that did not have access to local. Correct?
5 That's 3.6 percent. Their first signal was a --

6 A Yeah. The first signal was a distant
7 signal.

8 Q Okay.

9 A Yes. There are --

10 Q How many -- I'm sorry.

11 A No, go ahead. I was just clarifying that
12 the only Public Television signal they get is a
13 distant public signal.

14 Q And are there occasions where there are
15 cable systems that have no PTV signal on them, either
16 local or distant?

17 A Yeah, there's a small -- like 2 percent of
18 them.

19 Q Okay. And we have about 2,500 cable
20 systems. Is that right?

21 A I think that's right, yes.

22 Q So doing the math, it's roughly 50?

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1 A If you say so. I can't do that in my
2 head. It's 2 percent of the total, whatever the total
3 is, 2,500. So yes, that would be about 50.

4 Q Okay. And the second bullet there is the
5 category of PTV that is carried in addition to local.
6 Correct? 6.7.

7 A That's right.

8 Q All right. And that's where we get the 10
9 percent because we can add the 3.6 and the 6.7, it
10 comes up to 10.3.

11 A That's right.

12 Q Okay. In the second bullet there, we've
13 got a 6.7 percent of, you said U.S. cable households
14 that get PTV on a distant basis, and have no other
15 access to PTV. And I take that to mean that there's
16 -- the corollary to that is that there are 94 percent
17 of U.S. cable households that have decided that either
18 no PTV or local PTV is good enough. Is that right?

19 A Was it 94 or --

20 Q Well, it's 100 minus 6.7. Right?

21 A Oh, I see what you're saying. Yes, 93
22 percent.

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1 Q All right. And if we look at the universe
2 in the aggregate, we have 23 percent that carry, which
3 I think is --

4 A Of the systems.

5 Q Of the systems, right.

6 A Right.

7 Q That carry PTV, which I think is your
8 Exhibit 15.

9 A That's right.

10 Q And they represent these 10 percent.

11 A Of subscribers, yes.

12 Q Okay. So the reverse of that then is, we
13 have 77 percent of systems representing 90 percent of
14 subscribers that don't take PTV on a distant basis.
15 Right?

16 A Yeah, that's correct.

17 Q Okay. Now if it's 77 percent representing
18 90 percent, if we do the math, we can figure out that
19 those systems are actually the larger systems. Right?

20 A That's right. Yes.

21 Q On average.

22 A Sure.

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1 Q All right. And would you agree -- are you
2 an economist by the way?

3 A No.

4 Q Would you agree with the notion that we
5 can look at what cable operators do, and that's
6 evidence of behavior within the cable market, can't
7 we?

8 A That would be yeah, that would be helpful.

9 Q Okay. On page 9 and 10 of your testimony,
10 you talk about the Annenberg Survey. Do you remember
11 that?

12 A Yes.

13 MR. TUCCI: Okay. Let me go ahead and
14 mark for the record PS Exhibit number 26-X. Let me
15 hand you a copy and hand the panel four copies.

16 (Whereupon, the above-referred
17 to document was marked as PS
18 26-X for identification.)

19 BY MR. TUCCI:

20 Q Take a minute to look at that. I believe
21 on the bottom of page 9 in your footnote 4, you
22 identify it as "Media in the home - 1999 - Annenberg

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1 Public Policy Center, University of Pennsylvania." Is
2 this the same survey?

3 A Seems to be, yes.

4 Q Okay. I want to direct your attention to
5 page 14 of the survey.

6 JUDGE von KANN: What page?

7 MR. TUCCI: Page 14 of the survey, which
8 is identified as PTV 000179. There's a couple of
9 graphs in the middle of that page.

10 BY MR. TUCCI:

11 Q Are you at the page with me, Mr. Fuller?

12 A I am.

13 Q Okay. We have figure 2.3 in the middle of
14 the page that says, "Where parents believe best
15 programs for young people can be found." And this is
16 for the period 1996 to 1999. And we've got graphs on
17 the board here which you might be able to look at and
18 see a little better than what we have on the page.
19 But if I'm reading this correctly, and tell me if I'm
20 not, that the area in the middle is for Public
21 Broadcasting. Right?

22 A That's right.

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1 Q Okay. And we have percentages expressed
2 for the years 1996, '97, '98, and '99 right there in
3 the middle. Right?

4 A That's right.

5 Q Okay. And then the part on the left is
6 broadcast and the part on the right is cable.

7 A Uh-huh.

8 Q All right.

9 JUDGE von KANN: Is that a yes?

10 THE WITNESS: Yes.

11 BY MR. TUCCI:

12 Q Okay. Now in figure 2.3, "Where parents
13 believes best programs for young people can be found",
14 Public Broadcasting scored 50 in '96, 61 percent in
15 '97, 48 percent in 1998, and 44 percent in 1999.
16 Right?

17 A I see it. Yes.

18 Q Okay. And it goes down from 1997 to 1999
19 by about almost what, 18 percent. Right?

20 A Right.

21 Q Okay. And then if we look at the column
22 on the right, the table goes up from I think it's 29

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1 to 31, to 37, to 38 for those four years. Do you see
2 that?

3 A I see that.

4 Q Okay. And if we look specifically at
5 1999, and add the broadcast and cable categories
6 together, we would get a number that is higher than
7 the Public Broadcasting number for "Where parents
8 believe best programs for young people can be found."
9 Is that right?

10 A That's kind of funky, but that's one way
11 to do it, I suppose.

12 Q Well, we'd just add -- I'm sorry.

13 A It's adding, you know, all of these
14 classes together when we're a single class. You know,
15 it speaks for those whole industries. So yes, if you
16 take my point.

17 Q I take your point. That's fine.

18 A Okay.

19 Q And the figure below it, figure 2.4,
20 "Where 10 to 17 year olds believe the best programs
21 can be found."

22 A Uh-huh.

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1 Q The percentages are substantially higher
2 for broadcast and cable on the left and on the right
3 than they are for Public Broadcasting. Right?

4 A Yes, I see that, and I understand that
5 because we had not been directing a lot of our
6 programming effort toward teenagers.

7 Q And in fact -- I'm sorry.

8 A Or pre-teens.

9 Q And, in fact, a lot of the programming
10 that you talk bout in your testimony is really for
11 little kids. Is that right?

12 A It's the under 12 group mostly.

13 Q Which part of them would be included in
14 these category right, the 10 to 17?

15 A A couple of years, but our emphasis has
16 been on children 2 to 5, and 6 to 11, and in
17 particular -- and the 6 to 11 is a more recent
18 phenomenon. In particular, 6 to 9.

19 Q All right. And what programs are directed
20 at the 6 to 9? Is that "Arthur"?

21 A "Arthur" is one. That's a very popular
22 show. I think "Dragon Tales", to some extent.

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1 JUDGE von KANN: Let me ask you a question
2 about this graph here. I, obviously, haven't had a
3 chance to read this study, and so maybe it gets
4 answered in here somewhere. And maybe you recall, Mr.
5 Fuller, maybe you don't. Looking at these figures,
6 what I find a little confusing is separating broadcast
7 public broadcasting and cable into different
8 categories when you can get public broadcasting on
9 cable. You can get broadcast stations on cable, so
10 it's not clear to me whether this is talking about the
11 people who looked at public broadcasting over the air,
12 but some of the people that answered about cable may
13 be thinking well, you know, I turn on my cable system,
14 and they watch some public broadcasting stations.
15 They watch -- do you understand how this survey was
16 set up to sort of separate the overlap problem that I
17 just mentioned?

18 THE WITNESS: Yeah. I know the problem
19 you're talking about, and I don't have a copy of the
20 questionnaire to see how they did it. The question is
21 about the language that was used in the interview, you
22 know. How do you characterize cable?

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1 I've seen other studies that have used
2 language similar to this, not from this study but
3 others, and they -- including the Roper Organization,
4 which uses cable -- in fact, they use cable, public
5 television, and regular television, I think. And
6 somehow, people seem to be able to make distinctions,
7 because you see clear differences between the answers.

8 JUDGE von KANN: When you told us, for
9 example, I think that 99 percent of cable systems have
10 PBS on there.

11 THE WITNESS: Yeah, that's right.

12 JUDGE von KANN: So when you talk about
13 cable, you're sweeping in -- I mean --

14 THE WITNESS: I know. It's a fair
15 question, and I don't know the precise answer to it.
16 We have not seen anything in our surveys that made us
17 terribly suspicious of that. People do seem to be
18 able to identify the three different categories. But
19 there may be some blurring in here.

20 JUDGE von KANN: All right.

21 MR. TUCCI: I don't have anything further
22 on this. Your Honor, I'd ask that PS Exhibit 26-X be

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1 reached for impeachment purposes.

2 THE WITNESS: The key thing to keep in
3 mind about this is that public broadcasting as a
4 single broadcaster is still well above the individual
5 categories. Now if you do add them together, that's
6 a different thing, but I don't know what to make of
7 that.

8 JUDGE von KANN: All right. Mr. Hester,
9 any objection?

10 MR. HESTER: No objection.

11 MR. TUCCI: Actually, I was just reminded
12 that it's actually their document that was produced,
13 and perhaps it would be more appropriate that it be
14 received for substantive purposes, which I assume you
15 have no objection to.

16 MR. HESTER: I don't have an objection to
17 that. It's a document underlying Mr. Fuller's
18 testimony, and he cited.

19 JUDGE von KANN: All right. We'll receive
20 it generally.

21 (Whereupon, the document
22 previously marked as PS 26-X

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1 for identification was received
2 into evidence.)

3 BY MR. TUCCI:

4 Q Mr. Fuller, are you familiar with the term
5 "branding"?

6 A Yes.

7 Q What does it mean?

8 A It refers to the efforts of a -- well, it
9 could be a product manufacturer, or it could be in our
10 case a television company, strengthening their
11 identity among their customers, so that if, you know,
12 you have a particular name or identity that you're
13 trying to impress upon people and have them become
14 familiar with, and like, and remember, you will do --
15 make efforts in your branding efforts to try to
16 strengthen that in people's minds.

17 Q Is that like tying things together? Is
18 that a fair way to look at it?

19 A Well, I'm not sure I know what you mean by
20 tying things together. It's the attitudes people have
21 toward your brand. Basically, the awareness and the
22 attitudes constitute perceptions of a brand.

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1 Q How does PBS -- does PBS engage in efforts
2 to try and brand itself?

3 A Oh, yes.

4 Q Okay. And how does it do that?

5 A Well, advertising is one way. Another is
6 to use your logo, use our logo as often as possible,
7 either in printed materials or on the air, trying to
8 encourage the stations to use the PBS logo in their
9 own productions. You know, if they produce a
10 promotional announcement to go on the air, that they
11 include the PBS logo. So all of these things build
12 awareness of the logo, as well. And as far as the
13 attitude toward it, we think that the programming
14 helps with that, because we have good programming.
15 They associate good programming with our brand because
16 we put the brand, branding the logo on the
17 programming. We also have promotional announcements
18 that we have created to be run on the stations that
19 reinforce the meaning of the brand. Like the Be More
20 Campaign which is currently running, Be More Informed,
21 Be More Enlightened, that sort of thing.

22 Q Are there situations where your

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1 underwriters try to use branding to brand themselves
2 to PBS programs, to your knowledge?

3 A Well, I'm not sure if that's branding, but
4 I would think an underwriter, and all underwriters get
5 a credit announcement at the start and the end of a
6 program - would want to be recognized for their
7 sponsorship of that program. So the very act of
8 broadcasting to an audience should help boost their
9 awareness and association with the sponsorship
10 program.

11 Q And in the promotional material that PBS
12 produces, is the sponsor given credit in that
13 promotional material often?

14 A On air?

15 Q No, not on air.

16 A Printed?

17 Q Right. I mean, on the air they get the 15
18 or 30 second spot - -

19 A They get their -- right.

20 Q -- that we were talking about before.
21 Right?

22 A I thought you meant in a promotional

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1 announcement.

2 Q No, like a magazine advertisement.

3 A Yeah.

4 Q Or a newspaper advertisement.

5 A Over the years, I think there have been
6 some instances where we may have done that. I don't
7 know that we do that on a regular basis. I don't see
8 all of the print ads that our company produces, so I
9 just don't know for sure.

10 Q And Mr. Wilson and I talked a little bit
11 yesterday about underwriting in general, but maybe
12 we'll get into it in a little bit more detail here.
13 To your knowledge, is it often the case that
14 underwriters will pick specific PBS programs because
15 they're in a particular area that they're interested
16 in?

17 A What kind of area?

18 Q Well, say like cooking shows.

19 A You mean content area.

20 Q Yes. Exactly. Exactly. I didn't mean
21 geographic area.

22 A Yeah, that's what confused me.

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1 Q I meant the content.

2 A Sure. They, for whatever reason that
3 works for them, yes, they will -- they may choose a
4 program for that reason. Yes.

5 Q And we have situations where like a
6 cooking show might be underwritten by a cookware
7 maker?

8 A Yes, that's true. I was just trying to
9 think where we have regulations against that. and I
10 believe it's in Public Affairs programs. For example,
11 an investigative documentary where you could not have
12 some company that stands to gain from the subject of
13 this investigative documentary as the underwriter. So
14 in that case, they're prohibited.

15 Q I assume kid's shows could be underwritten
16 by products that appeal to kids.

17 A That's right.

18 Q Underwritten by companies that sell
19 products that --

20 A That's right.

21 Q -- appeal to kids.

22 A Yes.

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1 Q And one specific example that I saw is in
2 1998, I think "The Discovery Zone", are you familiar
3 with that company - underwrote certain PBS programs.

4 A Yes. I've heard of that.

5 Q And Discovery Zone was an indoor
6 children's playground. Right?

7 A That's my recollection.

8 Q Which unfortunately has gone the way of
9 Chapter XI in bankruptcy proceedings.

10 A That's what I've heard, yes.

11 Q Do you know how much PBS received from the
12 Discovery Zone?

13 A No, I have no idea.

14 Q Let's look at a document that we'll mark
15 as PS Exhibit 27-X.

16 (Whereupon, the above-referred
17 to document was marked as PS
18 27-X for identification.)

19 MR. TUCCI: We'll identify it for the
20 record as a October 7th, 1998 article in the Hollywood
21 Reporter, and the byline of Paula Bernstein entitled,
22 "Nader gives Sesame the bird - changes include

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1 sponsorship as kid's show turns 30 this year."

2 A Yeah. I see Ralph Nader was protesting
3 the show's decision to accept corporate sponsorship.

4 Q That's right. Now in 1998, was there a
5 change in policy at PBS regarding sponsorship? Did it
6 become something that was more actively sought in this
7 era, the 1998-99 era than had been previously?

8 A I don't recall.

9 Q Well, this article talks about a new
10 contract, I think, for is it "The Children's
11 Television Workshop"? Is that the producer of "Sesame
12 Street"?

13 A That's right.

14 Q Okay. And this is specifically referring
15 to "The Discovery Zone" deal that we were talking
16 about a little bit ago. Right?

17 A Yes. It doesn't say why he objected to
18 it. It just says that he thought it was "exploiting
19 impressionable children", when all we broadcast is
20 just a credit. You know, we don't show products, we
21 don't show things in use, so I don't know what, you
22 know, burr was up his behind for that.

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1 Q Did this criticism change the way PBS does
2 business, to your knowledge?

3 A No.

4 JUDGE YOUNG: I'm sorry. I wasn't sure
5 from just glancing at this, whether this was a
6 "Children's Television Workshop" decision to accept
7 the sponsor, or a PBS decision.

8 THE WITNESS: Well, it would be both.
9 They would have -- "Children's Television Workshop"
10 would have approached or been approached by this
11 potential underwriter, in this case Discovery Zone.

12 JUDGE YOUNG: Right.

13 THE WITNESS: So they would have made the
14 deal, and then it would be up to PBS, you know, with
15 our rules regarding underwriting whether or not -- to
16 determine whether or not it was acceptable to have
17 them as an underwriter, so both would have approved
18 it.

19 JUDGE YOUNG: But does PBS get a cut of
20 the underwriting?

21 THE WITNESS: No.

22 BY MR. TUCCI:

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1 Q But doesn't the underwriting, in fact,
2 defray the cost of the production --

3 A Sure.

4 Q -- such that PBS' contribution might be
5 less?

6 A Well, sure, that's the way we operate. I
7 mean, we cobble together funds from a variety of
8 sources to pay for programs, one of them being
9 corporate support, members being another, grants being
10 yet another.

11 JUDGE YOUNG: Well, it says here that Gary
12 Tonelle, Executive VP for Operations at CTW said, "The
13 sponsorship will compensate for PBS' \$3 million cut in
14 yearly funding to CTW under its new contract."

15 THE WITNESS: I presume what that means is
16 that PBS was reducing the funding by \$3 million.

17 JUDGE YOUNG: Right. And this is being
18 used to make up some --

19 THE WITNESS: To supplement part of it.
20 What happens when we have to cut back funding like
21 that, and they don't have a way to make up the
22 difference, is they just produce fewer new episodes,

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1 so that's just the way we have to operate. But
2 apparently, this helped with some of it.

3 BY MR. TUCCI:

4 Q Now do you recall in this time frame, the
5 1998-1999 era, whether you were involved in any --
6 providing any material to the Discovery Zone in
7 connection with this sponsorship, your group?

8 A I can't remember what I had for lunch
9 yesterday. I certainly don't remember that. I may
10 have, but I just don't recall.

11 Q Now we talked a little bit yesterday about
12 the PBS Sponsorship Group.

13 A Yes, we did.

14 Q Does the PBS Sponsorship Group only seek
15 corporate underwriting of prime time public --

16 A No, it's not limited to prime time.

17 Q I see. So the things like the Discovery
18 Zone deal would be something that the PBS Sponsorship
19 Group would be out seeking. Right?

20 A They may have. There's no reason why they
21 shouldn't.

22 Q It wouldn't unusual. Right?

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1 A No.

2 Q All right. Do you know how much the PBS
3 Sponsorship brought into BBS in 1998?

4 A No, I don't. It was only started in the
5 summer of '97, so they were just getting up to speed
6 by that time.

7 Q Would the figure \$25 million surprise you?

8 A That sounds like a question on "Antiques
9 Roadshow", another popular prime time program. I'm
10 sorry. I can't answer that. It's a big number, and I
11 don't know whether that's what they brought in or not.
12 I don't get into that very much.

13 Q Do you work with the Sponsorship Group at
14 all?

15 A My staff does for the most part. I rarely
16 get involved with them.

17 Q And what does your staff do, to your
18 knowledge?

19 A Well, you described it earlier. I mean,
20 providing assistance and helping the producer persuade
21 a corporation to help fund the program. So in our
22 case, that could be preparing an audience projection,

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1 our estimate of how many people will watch it, or we
2 may provide research similar to what we presented in
3 our case here about the value and the usefulness of
4 public television as a medium for sponsoring a
5 program.

6 Q Has there ever been a situation to your
7 knowledge where the underwriting was committed on say
8 a sliding scale based on some of the ratings that were
9 achieved by the particular program? In other words,
10 if the ratings were higher, the underwriting would be
11 more?

12 A You'd pay more? No, I really don't know
13 of a case like that. I'm not saying that there hasn't
14 been one. I just personally don't know of one, and I
15 don't remember ever hearing anyone making a deal like
16 that. That would get us in the business of make
17 goods, by the way, and I know we don't do make goods.

18 MR. TUCCI: All right. I think I'm
19 through with that document, Your Honor. I'd ask that
20 it be received for impeachment purposes, PS Exhibit
21 27-X.

22 MR. HESTER: No objection.

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1 JUDGE von KANN: So received.

2 (Whereupon, the document
3 previously marked as PS 27-X
4 for identification was received
5 into evidence.)

6 BY MR. TUCCI:

7 Q Now we spoke a little earlier about
8 underwriting applying to children's programming, as
9 well as the prime time schedule. You know who "Elmo"
10 is, don't you?

11 A Oh, yeah.

12 Q Okay. Do you -- are you aware that -- you
13 don't watch "Sesame Street", I take it.

14 A I'm a little out of the target age group.

15 Q Are you aware that until recently when
16 Elmo got on "Sesame Street" and turned on his computer
17 it said, "You've Got Mail"?

18 A That's the first I've heard of that.

19 MR. TUCCI: All right. Let me ask that
20 this be marked as PS Exhibit 28-X.

21 (Whereupon, the above-referred
22 to document was marked as PS

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1 28-X for identification.)

2 JUDGE YOUNG: Elmo is a character on
3 "Sesame Street"?

4 THE WITNESS: Yeah, a little red fuzzy
5 guy.

6 BY MR. TUCCI:

7 Q Well, Elmo is a Muppet. Right?

8 A Yeah.

9 MR. TUCCI: Let the record reflect that PS
10 28-X is an article out of the Wall Street Journal
11 on-line dated July 11th, 2002, entitled "Critics claim
12 PBS has gotten too close to its underwriters."

13 A Yeah, I see it.

14 Q Have you seen this article before?

15 A No, it's the first time I've heard of this
16 incident.

17 Q But "You've Got Mail", the AOL
18 sponsorship.

19 A I promise you, I have never heard of this
20 before. I'm sure it was -- you know, they build a lot
21 of humor into "Sesame Street", and because "You've Got
22 Mail" became sort of part of the culture, I think

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1 that's why they must have included it. It sounds like
2 you're headed toward product placement activity.

3 Q Well, you can go there if you like.

4 A I'm not. But I repeat what I said, is
5 that "Sesame Street" has always been big on picking up
6 humor, and they use lots of it within the show. And
7 I don't think there was anybody in the country that
8 didn't know "You've Got Mail" was -- I mean, it became
9 a catch-phrase for a while.

10 Q Do you know whether -- I mean, I take it
11 if you didn't know that "You've Got Mail" was on
12 Elmo's computer, you didn't know that PBS was subject
13 to at least one article describing criticism about
14 "You've Got Mail" being on Elmo's computer.

15 A Yes. Yeah, that's news to me.

16 Q If you look at the right-hand column of
17 this article, the first page, it says "Elmo's Friends,
18 some leading corporate underwriters in PBS target
19 kids."

20 A Yes, I see that.

21 Q You see that. Are you aware of Playskool,
22 Kelloggs, General Mills, Leggo and Look Smart

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1 contributing over \$1 million each to "Sesame Street"?

2 MR. HESTER: Your Honor, could I ask for
3 clarification as to time frame for the question, since
4 the article is from 2002?

5 MR. TUCCI: Let me ask him if he's aware
6 of it, and then I'll ask if he was aware of it in a
7 particular year.

8 THE WITNESS: Oh, I hadn't even seen the
9 date.

10 JUDGE von KANN: So I'm sorry, what is the
11 question?

12 BY MR. TUCCI:

13 Q Mr. Fuller, were you aware that
14 underwriting of over \$1 million was provided by the
15 five companies that are listed there, over \$1 million
16 to "Sesame Street"?

17 A I wasn't aware of the amounts. I've heard
18 these names before associated with the program, The
19 Kellogg Foundation, General Mills, Leggo, Playskool,
20 and so forth.

21 Q To your knowledge, were those companies
22 one foundation, and do they include the ones at the

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1 \$500,000 to \$1 million level below there, were they
2 underwriters of "Sesame Street" in the 1998-1999
3 period?

4 A I don't know. I really don't.

5 MR. TUCCI: I don't have any further
6 questions about, Your Honor. I'd ask that it be
7 received as PS Exhibit 28-X for impeachment purposes.

8 MR. HESTER: No objection.

9 JUDGE von KANN: So received.

10 (Whereupon, the document
11 previously marked as PS 28-X
12 for identification was received
13 into evidence.)

14 BY MR. TUCCI:

15 Q Does PBS engage in merchandizing deals, to
16 your knowledge?

17 JUDGE von KANN: Other than tote bags?

18 MR. TUCCI: Yeah, this would be other than
19 tote bags. In other words --

20 THE WITNESS: I'm not sure. I'm just kind
21 of searching my mind, and I can't -- there may be
22 something in some kind -- I'm sorry. I'm guessing

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1 now. I don't know. I just don't know.

2 BY MR. TUCCI:

3 Q Do you know of any instance where PBS gets
4 a cut of say a toy sale?

5 A I don't know.

6 Q A book, or anything like that?

7 A No. I mean, we have a video division. We
8 actually sell videos, but I don't know about anything
9 to do with merchandizing. I'm just the wrong person to
10 ask.

11 Q Well, let's look at one of PTV's exhibits,
12 and it's part of Exhibit 4, which is about an inch
13 thick, so what I'm going to do is I'm going to hand it
14 out, because I don't think --

15 JUDGE von KANN: An excerpt from it?

16 MR. TUCCI: No, it's an article. There's
17 about 100 articles in Exhibit 4, I think.

18 JUDGE von KANN: Oh, okay.

19 MR. TUCCI: And what I'm going to do is
20 just give you a copy of the one article because it's
21 the only one that I'm going to ask any questions about
22 out of Exhibit 4. So we'll call it -- I mean, it's

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1 not really even a Demo Exhibit, because it's part of
2 PTV's exhibits that have been received. It's an
3 article out of the August 10th, 1998 Broadcasting and
4 Cable, entitled "PBS keeps its head above cable."

5 JUDGE von KANN: It's probably a good idea
6 to call it a Demo.

7 MR. TUCCI: Okay. That's fine. We'll
8 call it Demo 7. I'm sorry. Mr. Winters says that it
9 should be 8. We'll call it 8, and we'll give you a
10 copy of the chart that we've blown up there, and
11 that's Demo 7.

12 (Whereupon, the above-referred
13 to document was marked as PS
14 Demo 8 for identification.)

15 BY MR. TUCCI:

16 Q Take a minute to look at this article, if
17 you wouldn't mind, Mr. Fuller, while we're doing this.

18 The first part I'm going to ask you about is on page
19 22, and it's under the heading, "Can you say ancillary
20 shares"?

21 A Yes, I was just looking at that.

22 Q I'll just read from it for the record,

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1 "Keeping the best shows means, in part, coming up with
2 more money, and PBS has embarked on a broad range of
3 commercial ventures designed to enhance its
4 programming war chest."

5 I'll just skip to the next paragraph and
6 it begins, "The deals also extend to shares in toys
7 and books associated with PBS shows, something the
8 service has been criticized for passing up in earlier
9 years. You can assume that when we do a new contract
10 with "Barney", or establish a deal with the
11 "Teletubbies", ancillary shares of the toy and book
12 revenue are a part of the contract", Duggan says. Now
13 who is Mr. Duggan?

14 A He was the president of PBS, Irvin Duggan.

15 Q Before Ms. Mitchell?

16 A Right.

17 Q Okay. And he goes on to say, "That's the
18 way the new PBS does business."

19 A I see that.

20 Q Okay. And the first full paragraph
21 actually on the column says, "Though he won't discuss
22 that PBS has taken video, toy and book ventures, his

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1 service is striking. But he says the deals
2 collectively have added \$100 million to the PBS budget
3 over the past four years." And this is a 1998
4 article, so the past four years would obviously have
5 been from 1994. Right?

6 A Sure.

7 Q And you weren't aware of any of these
8 deals. Right?

9 A No.

10 Q Okay.

11 A On page 11 of your testimony, you talk
12 about "Reading Rainbow" being one of the shows that
13 encourages kids, or at least as a result of "Reading
14 Rainbow", kids are encouraged to go out -- ask their
15 parents to go out and buy books from it. Right? Were
16 you aware that at least in some circumstances
17 according to this article, PBS was getting a cut from
18 those books?

19 A I was not aware of that.

20 Q And you go on to say I think in the next
21 page, page 12 of your testimony, that it's your view
22 that going out and buying a book is an okay, but on

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1 commercial television, there might be a situation
2 where a kid is perhaps pressuring a parent into buying
3 something that's too pricey. Right?

4 A Or unnecessary.

5 Q Or unnecessary.

6 A Yeah.

7 Q But then, of course, there's going to be
8 circumstances on commercial television where a kid is
9 pressuring his parents to go out and buy a basketball
10 or something that's pretty useful. Right?

11 A There could be.

12 Q Were you involved at all in the launch of
13 the "PBS Kids" portion of PBS? Is that a branding?
14 Let me ask you that.

15 A Yeah, that's branding.

16 Q Okay. So the "PBS Kids" logo that appears
17 on children's program is part of trying to separate
18 those programs, and brand them into PBS. Correct?

19 A That's right, yes. I should say that the
20 reason why they're branding it is because PBS produces
21 interstitial material fed between the programs that
22 tries to benefit the children. It's kind of

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1 educational. It's to help them learn, to help them
2 understand themselves and so forth, so all of that is
3 used to tie together and package the service as "PBS
4 Kids". That's the nature of it.

5 Q And I think Mr. Wilson testified yesterday
6 that, or it's actually probably in his written
7 testimony that during the 1998- 99 period, there was
8 a big push with respect to the websites for children's
9 programming in particular, as being another place that
10 children could go to the website for the particular
11 show, and get further information or what have you.
12 Right?

13 A That's right, yes.

14 Q Okay. Do you know when the website for
15 "Sesame Street" or any of those programs were
16 launched? Was that all about in 1998?

17 A I don't know. I really do not.

18 Q Did you have anything to do with the
19 websites for these particular shows?

20 A We do some research for the website, but
21 I don't know if we did them for the children's shows,
22 because there are other people on my staff who do that

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1 research.

2 Q Have you ever looked at the "Sesame
3 Street" website?

4 A I may have glanced at it once. I just
5 don't remember anything about it.

6 MR. TUCCI: This will be PS Exhibit 29-X,
7 and we've shot a picture up on the screen there.

8 (Whereupon, the above-referred
9 to document was marked as PS
10 29-X for identification.)

11 MR. TUCCI: It's the "Sesame Street"
12 website, the current website. And you said you've
13 never seen it. You never -- you don't recall --

14 THE WITNESS: I haven't seen this page.

15 MR. TUCCI: Okay. This is the Home Page.

16 THE WITNESS: Uh-huh.

17 MR. TUCCI: I think the way it works is
18 you go to "PBS Kids", and then you hit the specific
19 show, and then you go to the show's specific page.

20 THE WITNESS: That sounds right.

21 MR. TUCCI: Okay. And you look on the
22 bottom there, we've got AOL.

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1 THE WITNESS: Uh-huh.

2 MR. TUCCI: And we've got Spaghetti-Os.

3 THE WITNESS: Uh-huh.

4 MR. TUCCI: And we've got Quaker Oatmeal.

5 THE WITNESS: Uh-huh.

6 BY MR. TUCCI:

7 Q Okay. Did you know that those are
8 hyperlinks?

9 A No.

10 Q Okay. That a kid can go and in two clicks
11 on that AOL icon, go to the Home Page for AOL. Do you
12 know what PBS gets for that?

13 A No.

14 Q And there's AOL. Okay.

15 A Keep in mind, this is a choice thing.
16 It's different from when you're watching a television
17 program, and you have no choice but to see all these,
18 you know, like 12 minutes of commercials. Here they
19 can ignore it, if they choose to. It's not right in
20 your face. It's there, to be sure.

21 MR. TUCCI: I'd ask that Exhibit 29-X be
22 received for impeachment purposes. WE're going to

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1 look at another one of these. Here's the one for
2 "Arthur". I'll pass that one around.

3 JUDGE von KANN: Find out if Mr. Hester
4 has any objection.

5 MR. HESTER: I don't have any objection.
6 I'm relying on what you said, Mr. Tucci, this is the
7 current website. Okay.

8 JUDGE von KANN: So received.

9 MR. TUCCI: And I think I asked Mr.
10 Fuller, but if I didn't, you don't have any idea what
11 this website looked like in 1998 or 1999.

12 THE WITNESS: No. No.

13 MR. TUCCI: You don't have any current
14 recollection.

15 THE WITNESS: No.

16 JUDGE von KANN: Received for impeachment.

17 (Whereupon, the document
18 previously marked as PS 29-X
19 for identification was received
20 into evidence.)

21 MR. TUCCI: Okay. Here's the "Arthur"
22 website. This will be PS 30-X.

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1 (Whereupon, the above-referred
2 to document was marked as PS
3 30-X for identification.)

4 MR. TUCCI: And again, it has hyperlinks,
5 and it also has right there on the bottom Juicy Juice
6 and Alphabets. Do you know whether Juicy Juice and
7 Alphabets are under -- I'm sorry, there's another one.
8 There's Chuck E Cheese too. Juicy Juice, Alphabets
9 and Chuck E Cheese, do you know whether their
10 underwriters of "Arthur"?

11 THE WITNESS: At one time or another they
12 had been. I don't know if they are currently, but
13 apparently they are, according to this.

14 BY MR. TUCCI:

15 Q Do you know how much they contribute
16 either individually or in the aggregate?

17 A No, I don't know anything about the dollar
18 amounts. I don't get into that, Mr. Tucci.

19 MR. TUCCI: That's 30-X. We'd ask that it
20 be received for impeachment purposes.

21 MR. HESTER: And could I again ask for
22 clarification if that is the current website?

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1 MR. TUCCI: That is the current website.

2 MR. HESTER: I have no objection to it
3 coming on.

4 JUDGE von KANN: All right. So received.

5 (Whereupon, the document
6 previously marked as PS 30-X
7 for identification was received
8 into evidence.)

9 MR. TUCCI: 31 will be the website for
10 "Barney", which a child can go to.

11 (Whereupon, the above-referred
12 to document was marked as PS
13 31-X for identification.)

14 BY MR. TUCCI:

15 Q This one only has one. It's Chuck E
16 Cheese is the underwriter, so it's a repeat
17 underwriter. Right?

18 A I guess.

19 Q Okay. And you don't have any knowledge
20 about how much Chuck E Cheese pays to underwrite
21 "Barney"?

22 A No.

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1 Q Do you have any idea how long Chuck E
2 Cheese has underwritten "Barney"?

3 A No.

4 MR. TUCCI: I'd ask that 31-X be received
5 under the same stipulation, if you'd like.

6 JUDGE von KANN: As the current website.

7 MR. TUCCI: The current website.

8 JUDGE von KANN: All right. Received for
9 impeachment.

10 (Whereupon, the document
11 previously marked as PS 31-X
12 for identification was received
13 into evidence.)

14 MR. TUCCI: And finally, we have "Dragon
15 Tales", which will be 32-X.

16 (Whereupon, the above-referred
17 to document was marked as PS
18 32-X for identification.)

19 BY MR. TUCCI

20 Q This one is pretty interesting, and a
21 little different than the other ones, in that do you
22 recall this morning we were talking about sugary

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1 cereal being advertised on commercial television,
2 children's programs?

3 A Yes, I said that.

4 Q And I think Kelloggs is the sponsor or the
5 underwriter, at least now, of "Dragon Tales". And if
6 you look real closely, the actual cereals that
7 Kelloggs is identifying at the bottom of the "Dragon
8 Tales" website are Kelloggs Frosted Flakes and Fruit
9 Loops. Do you see that?

10 A Yeah, that's mentioned right there. There
11 are no commercials on this website, Mr. Tucci.

12 Q Well, you can click twice and you'd be
13 right on that Frosted Flakes website, can't you?

14 A That's right.

15 MR. TUCCI: All right. That's 32-X, and
16 I'd ask that it be received for impeachment purposes
17 under the same stipulation.

18 JUDGE von KANN: Mr. Hester.

19 MR. HESTER: Stipulation that it's the
20 current website.

21 JUDGE von KANN: Right.

22 MR. HESTER: Yes. On that basis, I don't

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1 have an objection to it.

2 (Whereupon, the document
3 previously marked as PS 32-X
4 for identification was received
5 into evidence.)

6 BY MR. TUCCI:

7 Q In your testimony, in the same sort of
8 general area, you talk about the value of
9 commercial-free in the PBS broadcast.

10 A Yeah, I said that.

11 Q You've testified in these proceedings
12 before. Right?

13 A Yes.

14 Q Okay. And you realize that the charge of
15 the CARP in this matter is to determine the market
16 value of the programming. Is that right?

17 A Yes, that's my understanding.

18 Q That's been broadcast on a distant signal
19 basis.

20 A Distant signal, yes.

21 Q And the fact that PBS programming is
22 sometimes, or it could be viewed as being

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1 commercial-free, that deals with the format. Right?

2 A Well, it means that we do -- yeah, in a
3 general sense. We don't interrupt the program and
4 insert commercial messages.

5 Q And how would that be any different than
6 say a broadcast that was broadcast in like Dolby
7 Stereo or wide-screen format? I mean, those are
8 format things. Right?

9 A I don't see how you'd compare that here.

10 Q Well, it's the way the program is
11 presented. Right?

12 A Yeah.

13 Q It's presented without commercial
14 interruption.

15 A Right.

16 Q But the programming content is the same,
17 whether it has commercial interruptions or not.
18 Right?

19 A Yeah. It's the same, it's just that
20 there's less of it if you have commercials.

21 Q And there is -- this proceeding is charged
22 with compensating copyright owners that own that

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1 program content. Right?

2 A Yes.

3 Q To your knowledge?

4 A Yes.

5 Q Now do you know that TIVO is?

6 A Yeah. I don't own one, but I've heard it
7 been talked about.

8 Q Maybe you should explain it so that we all
9 understand it.

10 A What a TIVO device is?

11 Q Yes.

12 A As I understand it, it's a circuitry --
13 I'm getting a little over my head here. It's -- I'm
14 going blank on it. I know it will delay a program as
15 you're watching it. And I can't remember if it's got
16 a VCR built into it, or a DVD or what, because I don't
17 own one. But I know it's a way of time shifting.

18 Q It's a device that will take a program and
19 basically cut the commercials out. Is that your
20 understanding?

21 A You can do that, yes.

22 Q It's one of the things that you can do

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1 with a TIVO. Right?

2 A Yeah.

3 Q You can sort of do that with a remote
4 control too, can't you?

5 A Yeah, that's right.

6 Q And except for Ms. Mitchell, we're all men
7 in this room. We've always been stereotyped as being
8 people who change the channel all the time. Right?

9 A You haven't met my wife.

10 (Laughter.)

11 Q I mean, the point is, is that, you know,
12 you can get around commercials if you want to, can't
13 you?

14 A You can, and I've seen some studies that
15 have tried to investigate TIVO on this point, and
16 they're conflicting, so I'm not sure whether people
17 are doing it or not. I think what I've seen is that
18 they're mostly not.

19 Q And I think at one point in your testimony
20 you talk about the pleasures of watching
21 commercial-free television.

22 A Yeah.

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1 Q Do you remember that? And I take it you'd
2 agree with me that commercially interrupted television
3 is much more highly rated than commercial-free
4 television. Isn't that right?

5 A That doesn't follow.

6 Q No, I mean, it's just a question. Is
7 commercially interrupted television more highly rated
8 than non-commercially interrupted?

9 A Some is, some isn't.

10 Q As a general rule.

11 A No, I'm not going to answer that that way.

12 Q All right. That's fine. That's fine.

13 A Because, you know, there's like hundreds
14 of channels now with teeny-tiny ratings.

15 Q Does broadcast television, in general,
16 have higher ratings than PBS?

17 A In general. There are -- like UPN and WB
18 are close to PBS in ratings, if you're talking
19 strictly about broadcast. And then Fox, and ABC, CBS,
20 NBC, yes, they have higher ratings.

21 Q And they're commercially interrupted.
22 Right?

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1 A Yes, they are. But remember, if you ask
2 a person whether they want them there or not, then we
3 go back to the results we saw in that earlier study.
4 They don't have any choice but to watch what's offered
5 in programming like, you know, "NYPD Blue", for
6 example.

7 Q But we know what they do. Right?

8 A They do. The put up with it.

9 JUDGE von KANN: Or they go to the rest
10 room.

11 MR. TUCCI: Or they plug in the TIVO, or
12 they hit the remote, or they do whatever.

13 THE WITNESS: Yeah.

14 JUDGE von KANN: My grandmother years ago
15 when she'd watch TV, this was before remote controls,
16 she had as a device, had a wire coming from the set,
17 and it had a volume control. She called it the "Blab
18 Off", and as soon as the commercials came on, she'd
19 grab it and turn it down until --

20 THE WITNESS: I think the early Zeniths
21 had that. My uncle had one of those. She should have
22 patented it.

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1 MR. TUCCI: Your Honor, as yesterday, no
2 time is any better than the other. I'm happy to keep
3 going. I'm happy to stop here. Whatever your
4 pleasure.

5 JUDGE von KANN: Well, I take it you have
6 more than a few minutes.

7 MR. TUCCI: I do have more than a few
8 minutes.

9 JUDGE von KANN: Well, why don't we --
10 this is a good time. Let's break until 2:00.

11 MR. TUCCI: Okay.

12 (Whereupon, the proceedings in the
13 above-entitled matter went off the record at 1:03 p.m.
14 and resumed at 2:03 p.m.)

15 JUDGE VON KANN: Okay. Mr. Tucci, you're
16 on.

17 BY MR. TUCCI:

18 Q All right. Before we broke, Mr. Fuller,
19 we were talking about commercial interruptions --

20 A Yes, we were.

21 Q -- in public television. Let me hand you
22 what we will mark for identification as PS Exhibit

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1 33-X, and represent that it was provided to the
2 Program Suppliers by counsel for PBS as a document
3 underlying your testimony.

4 (Whereupon, the above-referred
5 to document was marked as PS
6 Exhibit No. 33-X for
7 identification.)

8 It's entitled PBS Brand Versus Cable
9 Brands: Assessing the Brand Image of Public
10 Television in a Multi-Channel Environment, written by
11 Sylvia M. Chan-Olmstead and Yung Wok Kim. Have you
12 ever seen this document before?

13 A Yes.

14 Q Okay. And it's from the Journal of
15 Broadcasting and Electronic Media, June 2002.

16 A That's right.

17 Q Okay. Did you commission this study?

18 A No.

19 Q Did somebody at PBS?

20 A Not to my knowledge.

21 Q Okay. If you wouldn't mind, turn to
22 page 315, which is PTV 00249.

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1 A All right. I have it.

2 Q And 250 actually. Those are the two pages
3 that I'm going to concentrate on. At the top of 249
4 it starts, "The discretion and conclusion." The
5 middle part of that, the author stated, "It seems that
6 the equity of public television today rests largely on
7 its 'quality' and 'trustworthiness' image. Favorite
8 networks such as A&E and Nickelodeon, while offering
9 highly rated similar programming, were not able to
10 garner the same level of trust that many audiences
11 have placed on public television.

12 "The authors believe that viewers'
13 perception of public television as a non-commercial
14 entity is the root of such trust and should continue
15 to serve as an important differentiating point for
16 public television in its marketing effort, especially
17 in the area of children's programming.

18 "On the other hand, evidence seems to
19 indicate that public television has not been able to
20 develop beyond the quality, intelligent, and
21 trustworthiness brand image since PBS was perceived to
22 be much less exciting than most comparable cable

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1 networks." Do you see where I am?

2 A I do.

3 Q Okay. Did PBS have any response to this,
4 to your knowledge?

5 A Not that I know of.

6 Q Okay. And, again, we were talking before
7 we broke about the commercial-free format of PBS not
8 being something that is different than the actual
9 content of PBS programming, do you remember that?

10 A Yes.

11 Q On page 250, at the top of the page --
12 it's in the paragraph that continues from PTV 000249,
13 I'm reading from the middle, the sentence that begins,
14 "Their strategic response" -- do you follow me?

15 A Yes, I see it.

16 Q Okay. "Their strategic response has
17 proved to be the key to reinventing public television
18 for the next digital, multi-channel media era.
19 Finally, based on the brand perception discovered in
20 this study, the authors would argue against the notion
21 of privatizing public broadcasting services or any
22 commercial activities, e.g. commercial minutes, that

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1 might dilute the trustworthiness equity of public
2 television. In other words, excessive moves towards
3 commercialism would risk turning public television
4 into simply another competing cable network, forsaking
5 its strong equity, apparently unmatched by its cable
6 counterpart." Do you see that?

7 A I do.

8 Q Okay. Had you read this study before?

9 A I had only seen the summary information
10 from it. I had not seen the whole study.

11 Q Okay. Have you discussed this study with
12 anybody at PBS?

13 A No.

14 MR. TUCCI: Your Honor, I'd ask that
15 Exhibit 33-X be received as impeachment material.

16 MR. HESTER: No objection.

17 JUDGE VON KANN: All right. It will be.

18 MR. TUCCI: Actually, again, Your Honor,
19 this was a document that was provided as underlying
20 Mr. Fuller's testimony, so I think it probably would
21 be more properly received --

22 MR. HESTER: It's cited in his testimony.

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1 And if Mr. Tucci wants to admit it -- to present it as
2 substantive evidence, we don't have an objection.

3 JUDGE VON KANN: All right. It is
4 received.

5 (Whereupon, the above-referred
6 to document, previously marked
7 as PS Exhibit No. 33-X for
8 identification, was received in
9 evidence.)

10 BY MR. TUCCI:

11 Q Let's talk a little bit about ratings, Mr.
12 Fuller. I think you testified earlier that ratings
13 are one of the main components of the reports that
14 your group prepares, correct?

15 A Yes, they are.

16 Q And they're important to PBS.

17 A Yes, they are.

18 Q And I think they're important in
19 children's programming, in particular, right?

20 A Well, they're a form of evaluation.

21 Q And we know that, from yesterday and from
22 this morning, and I think even in your written

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1 testimony, that the children's programming on PBS is
2 highly rated. It's some of the most highly rated
3 programming in television, right?

4 A Not on a household basis. But on a target
5 audience basis, it is. If you focus on the children
6 two to five, those ratings can be high.

7 Q And you believe that high ratings equal
8 loyal watchers, don't you?

9 A I can't translate that into loyalty
10 necessarily. It certainly means that they -- that a
11 lot of people watch it at a given moment. I would
12 probably assume -- no, I can't assume that either.
13 That's the end of my answer.

14 Q Okay. When you testified earlier about
15 the 28 percent of U.S. households have children under
16 the age of 12, do you know what the percentage of U.S.
17 cable households who have children under the age of 12
18 is?

19 A No, I don't.

20 Q Okay. Is there any particular reason you
21 used U.S. households as opposed to cable households in
22 citing that?

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1 A No. But from what I recall, cable
2 households tend to be younger households. And for
3 that reason they probably have more children in them.

4 Q Okay. But you haven't seen that
5 statistic, I take it?

6 A Not recently.

7 Q And is there some reason you picked 12 as
8 the cutoff for that statistic? Why didn't you use
9 under six, let's say?

10 A Well, because we do make some effort to
11 try to reach the children in the six to 11 range.

12 Q I think you'd agree with me that the
13 children's programming that's on PBS is generally
14 targeted to younger kids than 12, right?

15 A Most of it is, yes.

16 Q And the highly rated programming that's on
17 PBS is, in fact, highly rated by those that are under
18 12, right?

19 A Yes. It's two to fives and also fairly
20 substantially the six to nine-year old group, or six
21 to eight. Six to eight.

22 Q And those are the shows that we were

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1 looking at, like the Sesame Street, the Barney, the
2 Arthur, and Dragon Tales. Those are the four most
3 highly rated, right?

4 A Yes, I think that's right. I don't know
5 if we've left any out, but certainly those are higher
6 rated.

7 Q If you would, get out the exhibits for
8 public television, please. We're going to look at
9 some that are under the tab of Exhibit 5, which is a
10 series of memos starting I think October 9, 1997, and
11 then going basically through the two years 1998 and
12 1999. Do you see where I am?

13 A I do.

14 Q Okay. The first one there is dated
15 October 9, 1997, right?

16 A Yes.

17 Q Okay. And it says to General Managers,
18 Program Managers, Advertising and Promotion Managers,
19 from Kathy Quattrone, John Wilson, Steven Gray, Shawn
20 Halford, Carol Field -- Feld, excuse me -- and Judy
21 Vaughn, is it?

22 A Vraughn.

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1 Q Vraughn.

2 A Yes.

3 Q Do you receive these memoranda? Did you
4 receive this particular memorandum?

5 A No, I did not.

6 Q Okay. Does your group provide any
7 information, either directly or indirectly, that's
8 used in this -- in this memorandum and the ones that
9 we're going to talk about after it?

10 A Well, this came from the Program
11 Department, and they do use our data. I don't know
12 whether we contributed directly to this. Probably
13 indirectly.

14 Q Okay. Would you look at page 4 of this
15 first memo, please?

16 A I'm there.

17 Q Are you there?

18 A I'm there.

19 Q And the first bullet I guess under the
20 paragraph says, "NOVA's new winter/spring season
21 includes a hit for sweeps, Surviving Everest (WT)."
22 Whatever that means.

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1 A Working title.

2 Q Working title. Okay. Do you see that?

3 A I do.

4 Q Why does PBS care about sweeps?

5 A Well, that's when Nielsen conducts local
6 market surveys, and the stations would like to make
7 sure that they have good programming so that they can
8 get a good read on their audiences.

9 Q And you compare that data, I take it, to
10 the sweep data for the other cable networks and
11 broadcast networks as well, right?

12 A Well, the broadcast networks. I don't
13 think they pay much attention to the cable networks.

14 Q When you are providing information to
15 underwriters, do you provide prime-time information,
16 sweep information, total day information, or does it
17 just depend?

18 A Well, if you're talking about corporate
19 underwriting, first of all, we're not looking at
20 sweeps. That's really -- it really doesn't matter
21 that much. We focus more on the national audiences
22 whenever a program airs, because we can obtain

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1 measurements whenever we wish, not just limited to the
2 sweep months.

3 Q Do you have -- have you ever heard of an
4 underwriting asking for sweep rating information?

5 A Not in my department I haven't. I think
6 that's a local market concern.

7 Q Let's look at the next one, if you will,
8 which it goes on for a bit. You're probably going to
9 have to go through about 20 pages --

10 A Okay.

11 Q -- to get to May 29, 1998.

12 A I have it.

13 Q Okay. And I'm going to look at page 9,
14 the paragraph at the bottom of the page, where it
15 says, "Our program promotion work will focus on
16 building: 1) tune in to increase the amount of time
17 viewing and using our programs, and 2) program
18 awareness/image to help close the gap between actual
19 viewership of our programs and people's perceptions
20 about their viewing behavior." Do you see where I am?

21 A I do.

22 Q Is there an issue at PBS with -- well, let

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1 me ask it this way. Have you seen studies that
2 reflect people answering that they watch PBS more than
3 the empirical data would suggest or would
4 substantiate?

5 A I've seen that for every network. If you
6 just ask people to recall their viewing, sometimes
7 they will inflate it. It's just memory artifact.

8 Q There's not a particular issue with people
9 saying, as far as PBS is concerned, public
10 television --

11 A No.

12 Q -- that they -- I'll finish the question
13 -- that they perceive that they watch more public
14 television than they actually do. Is that my
15 understanding of your answer?

16 A I'm reviewing some studies that we have
17 done that don't really translate into ratings. It
18 depends on how the question is asked. But I think
19 that in general people will overstate viewing a little
20 when just asked over the telephone, "Have you watched
21 something?" within a given period of time.

22 Q So you're saying that --

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1 A That's my recollection.

2 Q As I understand your testimony, the issue
3 is no different for PBS than it is for ABC or NBC or
4 anybody else, is that right?

5 A There is a -- let me think about that a
6 minute, because I've seen different things. I
7 apologize for taking time, but I --

8 Q That's all right.

9 A Here's what I'm thinking. If you ask a
10 broad question, such as, "Have you watched some
11 particular channel during the past month?" it's a very
12 -- it's kind of a vague criterion, and people will
13 tend to say yes for whatever channel you're asking
14 about.

15 If it's a form of inquiry where people can
16 think about it a little, you run into something else.
17 I'm going back to my Arbitron days. We did a lot of
18 tests on diaries, which are handwritten questionnaires
19 that the respondents fill out. And there you had a
20 reverse phenomenon. People are doing this from
21 memory, and there there was a bias in favor of -- a
22 bias against the less viewed networks.

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1 If you were one of the major networks that
2 was watched a lot, people tended to get that right.
3 We could compare that to other data sources we had to
4 confirm it. Because they watch it a lot, they
5 remember it pretty well. But for those that they
6 didn't watch very often, including PBS, they tended to
7 understate their viewing to it.

8 So, and we see that phenomenon going on
9 today. It's worse today than it used to be.

10 Q But this is actually focused on the
11 reverse of that, isn't it, where people are reporting
12 that they're watching it more than actually maybe the
13 empirical data suggests?

14 A That's what you were asking about. I
15 mean, and I'm not sure what the statement is about
16 here.

17 Q Okay. You didn't write it?

18 A No, I did not write it. I don't know what
19 they're referencing.

20 Q Okay. Have you ever, in your capacity as
21 head of research for PBS, have you ever undertaken any
22 study that deals with the issue of people's perception

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1 about their viewing of PBS versus their actual viewing
2 of PBS?

3 A I don't think we have.

4 Q And you already testified that you don't
5 recall seeing anything that was directly specific to
6 PBS, is that right?

7 A Not like that, no.

8 Q If you wouldn't mind, go beyond -- go
9 another 20 pages, if you will, until you see the memo
10 dated May 26, 1999, to General Managers, Program
11 Managers, Advertising and Promotion Managers.

12 A Did you say February 26?

13 Q May 26.

14 A Oh, I'm sorry.

15 Q 1999.

16 A I have it.

17 Q At the bottom of that first page, it's
18 actually the second sentence from the bottom, it says,
19 "The 8:00 p.m. programs will deliver a strong lead-in
20 to NOVA at 9:00, which will in turn bring a sizeable
21 audience to Frontline at 10:00 p.m." Do you see that?

22 A Yes, I do.

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1 Q Okay. Was that the notion that we were
2 talking about yesterday of common carriage and trying
3 to have programs in prime time which are scheduled in
4 such a way that you maximize the audience that stayed
5 with the PBS programming?

6 A Well, for those stations that keep the two
7 programs together, yes. And that's what is assumed
8 here in this statement, that the two will be added
9 together, but we do find stations that will shift them
10 apart and insert something else in between them. So
11 it's up to the stations.

12 Q Is this something that your department
13 would track, how many folks tuned in at 8:00 p.m., and
14 then stayed on for the 9:00 p.m. showing of NOVA, and
15 then stayed on for Frontline at 10:00?

16 A We would if the scheduling department
17 asked us to.

18 Q Okay. But it's not one of the routine
19 things that you would do?

20 A No. It's more done on a special -- like
21 a diagnostic request.

22 Q You talk I think at page 23 in your

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1 testimony about viewer avidity and ratings. Do you
2 recall that?

3 A I do.

4 Q Okay. And what do you mean by "viewer
5 avidity"?

6 A Enthusiasm for the programming.

7 Q Are there ways to measure -- empirical
8 ways to measure viewer avidity?

9 A There probably are. This is mostly
10 speaking just from experience and anecdotal -- you
11 know, what we hear people say, plus the fact that, you
12 know, as we've said before, we have a pretty high
13 percent of people -- viewers -- who actually give us
14 money, you know, when they didn't have to, members,
15 contributors.

16 So all of that, plus, you know, what we
17 hear people tell us in their letters and their e-mail
18 and their phone calls, suggests that they are pretty
19 avid about many of our programs.

20 Q Have you reviewed the Program Suppliers
21 direct case in this matter?

22 A No.

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1 Q Have you ever seen a Nielsen report that
2 tries to express viewing -- or uses a ratio to express
3 the viewing as a percentage of time?

4 A Oh, I stand corrected. I have seen some
5 of that -- of that direct case. I did. I wasn't sure
6 what you were talking about. And I did see where they
7 were using the time, the average number of minutes, I
8 believe compiled by Nielsen.

9 Q Is that one way one could empirically
10 determine or empirically gather avidity numbers?

11 A Not in my experience. That has nothing to
12 do with avidity. I mean, that's just volume or
13 tonnage of viewing, you know. It doesn't tell you
14 anything except what it is. It's not avidity.
15 Nielsen doesn't measure avidity.

16 Q Okay. Could we take that a step further
17 and have volume -- have a ratio of volume in viewing
18 and put the two of them together to measure avidity?

19 A No. That still doesn't indicate avidity.

20 Q So viewing the time ratio would not be
21 valuable to measure avidity, in your view?

22 A No. It's just standardizing the

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1 statistic, you know, like average minutes per quarter-
2 hour viewed. And the fact that you spend a lot of
3 time watching something doesn't mean you are avid
4 about it. And I would say that for any television.
5 You know, you can watch -- you can go to sleep during
6 a three-hour movie or a football game. I've seen my
7 father do that many times.

8 Q How about quintile data? Do you know what
9 that is?

10 A Yes.

11 Q What does that mean?

12 A Well, that's when you divide the audience
13 up into five groups, equal size groups, based on the
14 amount of time spent watching a particular channel.
15 Or it could be -- well, more typically, it's watching
16 television. So you have heavy viewers, slightly heavy
17 viewers, moderate viewers, light viewers, and very
18 light viewers. And then often times that's used to
19 then calculate within a given group what channels they
20 watch.

21 Q Do you believe that quintile data could
22 provide any evidence of avidity?

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1 A No, it's the same thing. It's all based
2 on time spent. You need some kind of a psychological
3 measure to get at what I understand avidity to be.

4 Q And I noticed on page 21 of your testimony
5 you talked about the weary woman rocking a baby at
6 3:00 a.m., is that what you're talking about here when
7 you talk about the television being on?

8 A Yes.

9 Q You didn't mean to suggest that the core
10 of the Program Suppliers viewers were weary women
11 watching some show rocking their baby at 3:00 a.m.,
12 did you?

13 A That's just one anecdote.

14 Q Let's talk about look-alikes. If you
15 would, turn to Exhibit 21, which is one of the
16 exhibits to your testimony, and it's entitled Monthly
17 License Fees Charged by Selected Cable Networks. Do
18 you see that?

19 A I do see it.

20 Q And some of them are highlighted actually
21 at the top and some of them aren't. And I understood
22 your testimony to be that you were comparing, at least

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1 on a general basis, the ones that are highlighted as
2 having some attributes of the "look-alike," is that
3 right?

4 A That's right.

5 Q Okay. Let me --

6 A Although I'll confess, I don't know why
7 MTV and Lifetime are highlighted. Well, it may be
8 that some of these channels have some program that's
9 something like PBS's. That's all I can guess.

10 Q The top ones, The Discovery Channel, The
11 Learning Channel, Nickelodeon -- I don't know why
12 you'd have MTV in there.

13 MR. HESTER: I just think maybe I can
14 clarify for the record -- I think it's not anything as
15 sophisticated as was suggested. I think it's just a
16 glitch in the presentation of the exhibit.

17 MR. TUCCI: PBS, MTV, they go together,
18 right?

19 (Laughter.)

20 BY MR. TUCCI:

21 Q This is going to be PS Exhibit 34-X, and
22 it's entitled Cable Audience Report. It says "from

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1 PBS Research" in the upper left-hand corner. Do you
2 see that?

3 (Whereupon, the above-referred
4 to document was marked as PS
5 Exhibit No. 34-X for
6 identification.)

7 A That's us.

8 Q That's what I thought. This is one of the
9 reports that your department puts together, right?

10 A That's right.

11 Q Okay. And this was presented -- or
12 produced to the Program Suppliers by your counsel in
13 this proceeding. It's dated, compiled by Beth Walsh,
14 PBS Research, 12/30/99, and it's PTV 000904 down at
15 the bottom.

16 I'd like for you to turn to page 914,
17 please, in this document.

18 A I'm sorry. Page what?

19 Q PTV -- if you look in the bottom right-
20 hand corner --

21 A Yes, yes, I see that.

22 Q Okay. 914.

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1 A 914. Okay. All right, I have it.

2 Q It says, "Appendix 3, Monday-Sunday Full
3 Day Audience Trends, '94/'95, '98/'99," do you see
4 that?

5 A I do.

6 Q Okay. And this is the listing of average
7 ratings on the left and weekly cum ratings on the
8 right, correct?

9 A That's right, 24 hours a day.

10 Q Okay. And on the left-hand side we've got
11 broadcast, PBS, and networks, and then we have basic
12 cable listed under that, and the pay cable at the
13 bottom, right?

14 A Yes, we do.

15 Q Okay. I believe you were here yesterday
16 when you heard -- and you heard Mr. Wilson testify
17 that the look-alikes have -- are a competitor, at
18 least to some degree, to PBS, do you remember that?

19 A Yes, I remember that.

20 Q And you agree with that?

21 A Yes, they are to some extent.

22 Q Now, we can look at the ratings for the

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1 look-alikes by looking at this page, right?

2 A Yes, at least for the 24-hour day part.

3 Q Right. And we can look at PBS's 24-hour
4 ratings.

5 A That's right.

6 Q Okay. Let's engage in a little exercise.

7 A Before you do that, could I just --

8 Q Sure.

9 A -- make a comment on this -- interpreting
10 this? PBS stations, for the most part, the great most
11 part, are not on the air 24 hours a day. These cable
12 networks are. So most of our stations sign off around
13 midnight or 1:00. So these ratings have been deflated
14 by the fact that this is a 24-hour measurement.

15 You know, so Nielsen is counting the hours
16 from 1:00 a.m. until the station signs back on again
17 like at 6:00 in the morning, as part of the
18 denominator. And as a result, it causes our rating to
19 go down. I'm sure that if -- it would be slightly
20 higher than what you see here if that were not done,
21 if it were just our broadcast day. So I just want
22 everyone to understand that, that it's a little bit

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1 apples to oranges.

2 Q That leads me sort of to two questions.
3 Number one, the weary woman at 3:00 in the morning
4 wouldn't have PTV available to watch, would she?

5 A Probably no.

6 Q And, number two -- that was sort of
7 anecdotal, but nobody laughed.

8 A Yes.

9 (Laughter.)

10 In a few markets they would.

11 Q And the other question is: has the amount
12 of broadcast time for PTV increased over --

13 A Do you mean the length of the broadcast
14 day?

15 Q The length of the broadcast day, yes.

16 A For the average station.

17 Q For the average station over the decade of
18 the '90s.

19 A It's my perception that it has some. But
20 I don't know the exact numbers.

21 Q So the point that you just made may have
22 a different impact at the beginning of the decade than

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1 it actually has at the end of the decade, is that
2 right?

3 A Possibly a little, yes. It's not a
4 wholesale thing, because it's expensive to stay on the
5 air all night. And stations have been on hard times
6 for several years, so I imagine if there was a trend
7 it's probably been stanchied.

8 Q Now, we were talking a little bit about
9 the competition from cable networks, the look-alike
10 cable networks. Mr. Wilson couldn't remember
11 yesterday all of the program defections, I'll call
12 them, that -- situations where there is a PBS program
13 that actually has shown up on a cable network.

14 A Oh, right.

15 Q Are you familiar with that happening?

16 A Yes. There have been a few examples. I
17 think I have some in my testimony.

18 Q Right. And one of them was Nickelodeon
19 actually shows Sesame Street reruns, is that right?
20 Do you know that?

21 A Yes, I think some of the older ones.

22 Q Okay. And actually, it was -- the article

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1 that we went through that PBS keeps its head above
2 cable, which is part of Exhibit 4, actually lists
3 them. So just so the record is clear -- and I think
4 that in April 1998, Nickelodeon -- this is a quote,
5 "Nickelodeon bought the rights to the entire
6 Children's Television Workshop, including Sesame
7 Street reruns."

8 A What page are you on?

9 Q We're on page 21. Do you see where the
10 picture is of the farmer's wife? If you don't have
11 it, that's -- let me just ask you if that's your
12 recollection.

13 A I'm sorry. I don't know what you're
14 looking at.

15 JUDGE VON KANN: Page 21 of what?

16 MR. TUCCI: It's the article that is part
17 of Exhibit 4, which is the one that was buried in the
18 middle of about 100 articles. So I handed it out
19 separately. It's called -- we actually put a number
20 on it. It's Demo 8. Sorry.

21 THE WITNESS: Oh, that's the broadcasting
22 and cable article.

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1 MR. TUCCI: That's correct.

2 THE WITNESS: Okay. Let's start over.

3 MR. TUCCI: Okay.

4 JUDGE VON KANN: And what page are we
5 looking at?

6 MR. TUCCI: 21.

7 BY MR. TUCCI:

8 Q It's the paragraph immediately to the
9 right of the picture. It says, "Just this year, cable
10 channels engineered two key defections." Do you see
11 where I am?

12 A I do.

13 Q In April, Nickelodeon bought the rights to
14 the entire Children's Television Workshop, including
15 Sesame Street reruns, for its planned commercial-free
16 educational network. The deal came on the heels of
17 discovery communications packed with BBC to deliver a
18 BBC America cable channel. Like the Nickelodeon
19 channel, the BBC channel will carry reruns once
20 available in the United States only on PBS."

21 The first sentence in the next paragraph
22 goes on, "Other defections have included Scholastic

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1 Productions' decision last year to sell reruns of the
2 PBS animated series The Magic School Bus to Fox for
3 broadcast this fall."

4 My point is simply that the competitive
5 environment has included competition for viewers as
6 well as competition for program --

7 A The product, yes, that's correct.

8 Q Okay.

9 A I'm puzzled by that statement about
10 Nickelodeon buying the rights to the entire Children's
11 Television Workshop. I may be wrong, but I just don't
12 remember anything like that. I knew that they had
13 bought the rights to reruns of -- that programs that
14 are out of the rights period for PBS. We have a
15 three-year rights window, and I think they sold the
16 older ones to them. But I don't know about them
17 buying the entire thing, so I'm puzzled. I wonder if
18 the reporter didn't botch that up.

19 Q I only know what I read in your --

20 A Yes, I know.

21 Q -- the exhibits to your testimony.

22 A I understand.

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1 JUDGE GULIN: Mr. Tucci, are you finished
2 with Exhibit 21?

3 MR. TUCCI: Actually, we're going to come
4 back to it right now.

5 BY MR. TUCCI:

6 Q And when a cable operator makes a choice
7 between carrying PBS as a distant signal and as a
8 cable look-like, I mean, there's a cost differential
9 there, isn't there? Are you aware of that?

10 A A cable operator --

11 Q Yes.

12 A -- making a decision to carry PBS as a
13 distant signal versus carrying some cable network?

14 Q Correct.

15 A Yes. Yes, there's a cost differential.

16 Q And PBS is markedly cheaper, isn't it?

17 A It's one-fourth, as I understand.

18 Q Well, that's --

19 A Well, there was some ratio in there that
20 was set by statute. I think that can be said.

21 Q I'm talking about a cable network versus
22 PBS as a distant signal. Well, let me just --

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1 A Oh, oh, I'm sorry. Yes, I got the two
2 confused. Well, yes. I don't know what the costs
3 amount to for PBS as a distant signal, but I know that
4 they do -- the cable networks do charge cents per
5 subscribers --

6 Q Right.

7 A -- which is negotiated.

8 Q Right. And we have some of those license
9 fees listed on your Exhibit 21, right?

10 A That's right.

11 Q Let's look at 1998 for Nickelodeon, just
12 because, to be honest with you, that's the one I did
13 the math for. So I won't have to redo the math if we
14 look at Nickelodeon.

15 There was a per subscriber license fee in
16 1998 of 55 cents. Do you see that?

17 A I do.

18 Q Okay. Now, we can figure out the
19 difference -- we can figure out what a hypothetical
20 cable operator would pay for Nickelodeon given this
21 example, and we could also figure out what the
22 hypothetical cable operator would pay for a PTV

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1 distant signal as well, couldn't we?

2 A If you say so.

3 Q Okay. Well, let's try it, and we'll see
4 how far we can go with this.

5 A A lot of assumptions there.

6 Q Right. Did you read the testimony of Dr.
7 Johnson that's part of the PTV case?

8 A I've just glanced at the conclusions. I
9 haven't read the entire testimony.

10 Q Okay. Well, accept from me, if you will
11 -- and it could be subject to check or verification --
12 that Dr. Johnson I think in his Table 8 identifies
13 fees attributable to carrying PTV as a distant signal
14 in the amount of \$3.7 million for the year 1998. Does
15 that sound about right?

16 A I don't know. I truly don't know.

17 Q All right. Well, let's take a cable
18 operator with 30,000 subscribers. Okay?

19 A No one said there was going to be a test.

20 Q It's not a test. It's not a test.

21 (Laughter.)

22 It's just a couple of questions.

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1 A All right.

2 Q And we've got a license fee on 21 for
3 Nickelodeon of 55 cents a month, right? .55. So it
4 would be 30,000 times .55 times 12, right? 12 months.
5 Right?

6 A I see it.

7 Q That we'll get a year. And I worked that
8 up to \$198,000. Does that sound right?

9 A I'm going to have to trust you. I don't
10 do math in my head.

11 Q Now, the \$3.7 million that I identified
12 that Dr. Johnson quotes as the fees gen, or the
13 identified fees for 1998 carriage of PTV as a distant
14 signal, \$3.7 million, right, can be divided by the
15 subscribers, which you've testified is about six
16 million, right?

17 A Yes.

18 Q So we have PTV, we have six million
19 divided into \$3.7 million, and we can figure out a
20 yearly fee as well, and that equals, let's see, 62
21 cents. So we'd have to divide that further by 12 to
22 get the per month fee for carriage of PTV as a distant

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1 signal, which is about a nickel. And that's the
2 number that compares to that, right? Do you follow
3 me?

4 A Yes, I'm studying it.

5 Q Okay.

6 A Let me just back up a minute.

7 Q Keep going.

8 A The 3.7, again, you arrived at that how?

9 Q That's Dr. Johnson's figure. And I've got
10 to tell you that we don't agree with it.

11 A Well, all right.

12 Q But -- and we'll deal with that when Dr.
13 Johnson gets on the stand tomorrow.

14 A And it's 3.7 what?

15 Q Million dollars.

16 A Oh, 3.7 million.

17 Q Right.

18 JUDGE GULIN: And the six million is
19 subscribers for distant signals.

20 THE WITNESS: Correct.

21 JUDGE GULIN: Gotcha.

22 BY MR. TUCCI:

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1 Q And that is from Mr. Fuller's testimony.

2 A Right.

3 Q Subscriber --

4 A Well, shouldn't this be reversed?

5 Q Well, maybe.

6 A You're dividing the dollars by the
7 thousands of --

8 Q Okay. You're right, 3.7 million divided
9 by six million.

10 A Okay.

11 Q Equals 62.

12 A 62 cents.

13 Q And that's per year, because this
14 3.7 million is per year, and your six million is per
15 year, subscriberships for 1998.

16 A Okay. All right. I'm following your
17 math.

18 Q And it goes to 62 cents, and we divide --
19 if we wanted it expressed as a monthly charge, it
20 would -- which is the same way your Exhibit 21
21 expresses the subscriberships, right?

22 A Yes. Okay. So you'd come up with about

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1 five cents?

2 Q Correct.

3 A So that should have a zero in front of it.

4 JUDGE GULIN: That's got to be the 3.7
5 divided by the six million.

6 MR. TUCCI: Correct. That's what we just
7 changed that to.

8 JUDGE GULIN: Oh, I'm sorry. The witness
9 has --

10 MR. TUCCI: Yes.

11 JUDGE GULIN: Okay.

12 BY MR. TUCCI:

13 Q All right. So we can figure out how much
14 money that involves, like this \$198,000, right? By
15 multiplying our hypothetical 30,000 subscribers,
16 right, times .62 equals 18,600.

17 A On an annual basis.

18 Q Correct. Which this is on an annual
19 basis, isn't it?

20 A Right. Okay.

21 Q Okay. So our hypothetical cable system,
22 if faced with the choice of carrying PTV distantly for

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1 its subscribers, for all its subscribers, would incur
2 a royalty fee of \$18,600, and the same hypothetical
3 cable operator, when he's faced with the choice of
4 carrying Nickelodeon, is going to incur a fee of
5 \$198,000. So one is virtually 10 times more expensive
6 than the other.

7 Now, if we look at --

8 A Yes.

9 Q -- Exhibit 34-X, we can look at what the
10 ratings have done from the period 1994 through 1999
11 for the look-alikes and for PBS. And we can look at
12 the trends, right?

13 A Yes, we can.

14 Q Okay. And we took -- did a little chart
15 here that takes the rating for selected cable networks
16 -- and we'll call this Demo 9, is that right? PS
17 Demo 9.

18 (Whereupon, the above-referred
19 to document was marked as PS
20 Demo Exhibit No. 9 for
21 identification.)

22 And take a minute to look at it, but I

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1 think the numbers are all from 34-X.

2 A So you pulled an excerpt from this table.

3 Q Correct. For certain stations -- A&E,
4 History & Garden -- I'm sorry, Home & Garden --

5 JUDGE VON KANN: This is what number,
6 Michael? 35-X?

7 MR. TUCCI: No, this is Demo 9.

8 JUDGE VON KANN: Demo 9.

9 BY MR. TUCCI:

10 Q All right. Now, we've pulled from your
11 cable audience report, this 34-X, PS 34-X, the ratings
12 information for the same periods for certain selected
13 cable networks. Do you see that?

14 A I do.

15 Q And we used A&E, House & Garden -- is it
16 House & Garden or Home & Garden?

17 A It's Home & Garden.

18 Q All right. Home & Garden.

19 A It's come to be known as HGTV.

20 Q All right. History, TLC, Lifetime, and
21 Toon. Do you see that?

22 A I do.

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1 Q Do you agree that those are all look-
2 alike?

3 A Toon is certainly not. I don't -- I can't
4 recall what Lifetime runs. TLC, History, HGTV to an
5 extent because we have how-to programs, A&E, yes.
6 Discovery is not in here.

7 Q You're right.

8 A Because they didn't go anywhere.

9 Q Well, actually, it went from .4 to .5,
10 which would be the same as one of them.

11 A You're getting some huge percentage
12 increases, because these things were so -- ratings
13 were so small to begin with.

14 Q All right. Well, this is what the
15 competitive environment was, isn't it, between 1994
16 and 1999?

17 A Yes, it was.

18 Q And PBS ratings were going down, and cable
19 networks' ratings were going up, the look-alikes were
20 going up, right?

21 A These were, yes.

22 Q And that's despite the fact that it costs,

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1 in our example, 10 times as much to carry Nickelodeon
2 as a cable network than it does to carry PTV as a
3 distant signal.

4 A Yes.

5 Q So, I mean --

6 A Go ahead.

7 Q I mean, if we factor cost in there --

8 A Yes.

9 Q -- which we probably should, don't you
10 think?

11 A Well, it has to be taken into account. I
12 would say you're showing us with a downward trend. I
13 know that we have wiggled back and forth with that .9
14 and that 1.0, although you don't see it in this one
15 chart.

16 Q Well, the point is, I think on your
17 page 18 you said that subscribers consider the cable
18 look-alikes to be inferior. But what we have here is
19 actual empirical viewing data from your department
20 showing that subscribers are increasingly watching the
21 local ads, right?

22 A They have grown, that's right.

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1 Q And, I mean, they've demanded them,
2 haven't they?

3 A I have no idea whether they're demanding
4 them.

5 Q Do you know what the penetration of
6 Nickelodeon is?

7 A It's high.

8 Q In the cable network?

9 A I don't know precisely, but it's high
10 among the networks.

11 Q Would it surprise you if it was 94
12 percent?

13 A Of what?

14 Q Cable households.

15 A Penetration of cable households.

16 Q Correct.

17 A No, it wouldn't.

18 JUDGE YOUNG: I'm sorry. Penetration is?

19 MR. TUCCI: How many cable households --
20 as a percentage of total cable households, how many
21 have available Nickelodeon. Ninety-four percent have
22 available Nickelodeon -- have Nickelodeon available to

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1 their subscribers.

2 MR. HESTER: What year are you in?

3 MR. TUCCI: '98 and '99. Actually, you
4 can confirm that with NAB Exhibit 5-X, which I'm happy
5 to pass out again. And, actually, I think Mr. Stewart
6 used a page from the Kagan's from which that was taken
7 this morning, but we have another copy if you'd like
8 to see it.

9 THE WITNESS: What you're describing here
10 is the dynamic that's been going on in the
11 broadcasting industry for a couple of decades. You
12 can't help but give up a little audience. All the
13 broadcasters have been a little bit over this period
14 of time because of the increasing number of new
15 channels.

16 These guys have picked up a little because
17 they started from a low point. There has been a kind
18 of leveling process going on.

19 BY MR. TUCCI:

20 Q Well, they're just percentages, right?

21 A Yes.

22 Q I mean, if you go from a one to a two or

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1 a .1 to a .2, it's still, you know, a 100 percent
2 increase.

3 A Yes, I know.

4 Q Okay. But, you know --

5 JUDGE GULIN: Excuse me. How old are some
6 of these networks? Like A&E, History, Home & Garden.

7 THE WITNESS: Are you asking me?

8 JUDGE GULIN: Yes, sir.

9 THE WITNESS: A&E is one of the older
10 ones. It was -- I'm recalling that it was a merger of
11 two cable channels around 1980 or '81. I can't
12 remember the names, but this is the name they ended up
13 with.

14 HGTV is one of the newer ones, or H&G as
15 it shows here.

16 JUDGE GULIN: Meaning about when?

17 THE WITNESS: Again, I'm guessing, but
18 it's I think within the past six or eight years.
19 History is also -- well, you can see that because of
20 their audience starting from scratch.

21 JUDGE GULIN: Right.

22 THE WITNESS: And you know History is a

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1 recent channel.

2 JUDGE GULIN: Right.

3 THE WITNESS: In the mid '90s, I believe,
4 when it launched. The Learning Channel I believe is
5 a little older than that, maybe the late '80s.
6 Lifetime I don't recall, and Cartoon I -- I think is
7 more recent, maybe 10 or 12 years. But I'm really
8 guessing, Judge. I --

9 JUDGE GULIN: Okay.

10 THE WITNESS: That's just approximate --

11 JUDGE GULIN: It wouldn't be surprising,
12 I guess, then, that something like The History Channel
13 that only came into existence in '95 -- their ratings
14 would be increasing, assuming they're viable.

15 THE WITNESS: Right. That's right, as
16 their penetration increased and as people discovered
17 them.

18 JUDGE GULIN: By "penetration," you mean
19 more and more cable companies are carrying them?

20 THE WITNESS: Right. Exactly.

21 BY MR. TUCCI:

22 Q The point of why I'm asking all of this,

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1 Mr. Fuller, is, I mean, we have empirical evidence.
2 We don't need studies. We don't need to talk about
3 what people think they'd do. We know what they do.
4 We can look and see what they tune in to. We don't
5 need to look and see -- try and create or imagine
6 what's going through a cable operator's mind. We can
7 see what a cable operator does. In our example --

8 MR. HESTER: Your Honor, could I object?
9 I think he's really lecturing the witness. I think he
10 should be asking questions here.

11 MR. TUCCI: All right. I'd be happy to.

12 BY MR. TUCCI:

13 Q I mean, there is empirical evidence that
14 we can look to, isn't there?

15 A There's audience data. But that is -- as
16 I've said in my testimony, that is not the -- we
17 believe the key reason that a cable operator decides
18 whether to carry a channel or not. It's one that you
19 shouldn't ignore. I mean, how can you run a business
20 and leave out the major networks. But cable operators
21 are looking for variety, they're looking for quality,
22 they're looking for a menu that will attract

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1 subscribers and hold them. That's our contention.

2 Q Okay. We can look at what they have
3 actually done in the past, too, can't we?

4 A Who?

5 Q Cable operators.

6 A The cable operators.

7 Q We can look at the choices that they have,
8 in fact, made, can't we?

9 A Well, yes.

10 Q And that's historical, real-world
11 evidence, isn't it?

12 A Yes, it is, based on their selection of
13 channels. That's what I'm referring to.

14 Q And what they pay for it?

15 A And what they pay, that's true.

16 MR. TUCCI: I don't have anything further.

17 JUDGE GULIN: I have a couple of questions
18 on this. The point I took from your testimony
19 regarding Exhibit 21 was that because so much money is
20 being paid for these look-alikes it's reflective of
21 the value of your programming of the television --

22 THE WITNESS: That was our point, yes,

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1 sir.

2 JUDGE GULIN: Okay. It seems to me it's
3 kind of a mixed bag. When I look at Exhibit 21, the
4 only real look-alikes I see on here -- correct me if
5 I'm wrong -- is -- would be The Discovery Channel, The
6 Learning Channel, and Arts & Entertainment.

7 THE WITNESS: This selection is, I
8 believe, meant to be illustrative. There are some
9 that are not directly related to PBS. There are some
10 that have some programming like we have, for example,
11 Country Music TV. We've had -- I have a program that
12 we've had for years called Austin City Limits. Black
13 Entertainment Television, we do have some programming
14 addressed to African-Americans, and so forth.

15 JUDGE GULIN: Okay. Well, I'm going to
16 give you the benefit of the doubt and leave those out,
17 because they have very low license fees.

18 THE WITNESS: Okay. Well, that's fine.

19 JUDGE GULIN: Okay. So, really, it's
20 Discovery Channel, The Learning Channel, and Arts &
21 Entertainment, would be the most like public
22 television, is that fair?

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1 THE WITNESS: That's right. And
2 Nickelodeon for the daytime service for the
3 children's --

4 JUDGE GULIN: Well, I thought we
5 established this morning that Nickelodeon really
6 wasn't a look-alike, because back in '98/'99 there was
7 very little children's education on TV. It was mostly
8 more entertainment-type stuff that maybe would fit
9 more in the public -- the Program Suppliers group.

10 THE WITNESS: Well, I would have to leave
11 that to your judgment, because they were just starting
12 with their Nick Jr. at that point. That's our direct
13 comparison.

14 JUDGE GULIN: All right. Well, if I look
15 at Discovery Channel, The Learning Channel, and Arts &
16 Entertainment, I look at their license fees for '98,
17 it looks like it's -- if we average those three, it's
18 somewhere around 25, 26 cents, something like that.

19 So if your point was to compare that to
20 other types of programming that are represented by the
21 claimant groups here, look at something like CNN which
22 is maybe very close to the NAB claimant group, that's

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1 about 50 percent higher. Look at, oh, let's see, USA,
2 which maybe is more like Program Suppliers, something
3 like --

4 THE WITNESS: TBS would be a good example.

5 JUDGE GULIN: TBS? Well, that's not on
6 here.

7 THE WITNESS: That's not on there.

8 JUDGE GULIN: Yes, it's not on here. But
9 it would seem that the look-alikes are really kind of
10 at the low end of value to the free marketplace. Am
11 I wrong about that?

12 THE WITNESS: They are certainly lower
13 than some of the others.

14 JUDGE GULIN: All right.

15 THE WITNESS: Arts & Entertainment is
16 fairly high. Discovery, fairly high. But I
17 understand what you're saying.

18 JUDGE GULIN: Okay. Well, the good news
19 for you is, though -- and I think you mention this in
20 your testimony -- if you look at percent increases, it
21 looks like those have done very well compared --

22 THE WITNESS: Well, that was our point, it

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1 really was, to show that our type of content has -- is
2 being increasingly valued in this example, at a fairly
3 steep rate of increase.

4 JUDGE GULIN: Okay. And more so even than
5 ESPN percentage-wise, more so than really just about
6 anything else in here, I believe. But still, if you
7 look at relative value today as opposed to increases,
8 you're kind of on the low end. So it's kind of a
9 mixed bag.

10 THE WITNESS: It's lower than some of
11 them.

12 JUDGE GULIN: Okay.

13 THE WITNESS: Yes, certainly.

14 JUDGE GULIN: Okay.

15 JUDGE VON KANN: Mr. Garrett, do you have
16 a question or two?

17 MR. GARRETT: Just one. I wondered
18 whether 34-X had been received into evidence.

19 JUDGE VON KANN: 34-X. No, it hasn't.

20 MR. TUCCI: We'd ask that it be received
21 as substantive evidence here.

22 MR. HESTER: Okay. I don't have an

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1 objection, Your Honor. We have included it as an
2 exhibit.

3 JUDGE VON KANN: All right. It will be
4 received generally. Okay. Thank you.

5 (Whereupon, the above-referred
6 to document, previously marked
7 as PS Exhibit No. 34-X for
8 identification, was received in
9 evidence.)

10 Okay. Sports, I guess?

11 JUDGE GULIN: While Mr. Garrett is setting
12 up, let me ask you another question. It's about your
13 -- you have a somewhat lengthy discussion beginning on
14 page 20 --

15 THE WITNESS: Of my testimony?

16 JUDGE GULIN: Yes, sir.

17 THE WITNESS: All right. I have it.

18 JUDGE GULIN: Going on to page 25. It's
19 a significant portion of your testimony, in which you
20 essentially say that viewership doesn't mean anything
21 in terms of relative value to a cable operator.
22 That's pretty much what you were saying, or very

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1 little compared to other metrics.

2 THE WITNESS: Well, let me soften that
3 just a little.

4 JUDGE GULIN: I thought you might.

5 (Laughter.)

6 THE WITNESS: I said a moment ago that a
7 cable operator really can't totally ignore audience.
8 You wouldn't want to leave out the most popular
9 channels from your offering, so --

10 JUDGE GULIN: Okay.

11 THE WITNESS: -- that's really all I have
12 to say.

13 JUDGE GULIN: Well, I guess my question
14 is, given your extensive discussion here about it, if
15 absolute numbers -- if ratings and viewership means
16 relatively little, why would -- if it does -- a change
17 -- percentage change in viewership mean anything?

18 THE WITNESS: Well, we were just taking
19 that as an indicator of value to the cable operator,
20 that they're willing to pay these increased -- I don't
21 think cable operators are dropping these services,
22 because they're asking more on a cents per subscriber

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1 basis.

2 JUDGE GULIN: No, I'm not talking about.

3 THE WITNESS: Oh.

4 JUDGE GULIN: I'm talking about I think
5 there's going to be testimony in the proceedings that
6 the Nielsen numbers have improved drastically for
7 public television.

8 THE WITNESS: Oh, I see.

9 JUDGE GULIN: Do you have an opinion about
10 whether that means anything? If the absolute numbers
11 don't mean anything, why does a change in the absolute
12 numbers mean anything? If you have an opinion.

13 THE WITNESS: Hmmm. Well, I'm not sure
14 how I would answer that.

15 JUDGE GULIN: Okay.

16 THE WITNESS: I'm sorry. I --

17 JUDGE GULIN: No, that's fine.

18 THE WITNESS: I'd want to think about that
19 a little bit.

20 JUDGE GULIN: I'll talk to Mr. Johnson
21 about it.

22 THE WITNESS: Okay.

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1 JUDGE YOUNG: One other question I guess.
2 You had talked -- when you were talking about avidity,
3 I think you did this. Mr. Wilson might have as well.
4 Sort of commented that one of the interesting and
5 probably unique phenomena associated with public TV is
6 viewers are also contributors.

7 THE WITNESS: Right. Yes, I mentioned
8 that as well.

9 JUDGE YOUNG: Have you done any research
10 to sort of demonstrate numbers of contributors or in
11 any way that links up contributors to people who watch
12 public TV, or of any way that's relevant to this
13 concept of loyalty or avidity?

14 THE WITNESS: There is a study that we
15 conduct every other year among members, people who
16 have contributed, in which we ask them their opinions
17 of the service that we provide, and we get something
18 of a reading there. But there's really nothing to
19 compare it to as far as non-members. You'd need to
20 see the non-members' opinions as well to see if it's
21 that much stronger. I can't recall anything in recent
22 years on that subject.

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1 JUDGE YOUNG: Is there anything that tries
2 to figure out, among the cable subscribers who are
3 subscribers to cable systems which carry a PBS DSE,
4 any way of indicating, you know, what percentage of
5 those kinds of -- those subscribers actually are
6 members or contribute?

7 THE WITNESS: I don't believe we've
8 conducted a study that gets at that. You're talking
9 about the proportion of members that get PBS as a
10 distant signal, or the other way around, or --

11 JUDGE YOUNG: I guess I was talking the
12 other way around. We've talked about six million
13 individuals, six million --

14 THE WITNESS: Oh. Oh, right.

15 JUDGE YOUNG: -- households get PBS as a
16 distant signal, and I was wondering whether there's
17 any way of saying, well, one percent of that are
18 contributors, two percent, 50 percent, 10 percent --

19 THE WITNESS: Well, unfortunately, I just
20 don't know. We've not really done anything on that.

21 JUDGE YOUNG: Do we know how many people
22 are contributors to PBS?

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1 THE WITNESS: That we know. I know the
2 current figure. It's about 4.6 million, which is
3 about -- I think about eight percent of our weekly
4 cumulative viewership.

5 JUDGE YOUNG: About eight percent?

6 THE WITNESS: Yes, something like that,
7 eight or nine percent.

8 JUDGE YOUNG: When you talk about
9 cumulative viewership, you are also talking about
10 people who would view it as a local signal or --

11 THE WITNESS: Yes, it's the total
12 audience. Yes, I don't know just among the distant
13 signal.

14 JUDGE YOUNG: Okay.

15 THE WITNESS: Sorry, we don't have that.

16 JUDGE YOUNG: Okay. Thanks.

17 JUDGE VON KANN: Okay. Mr. Garrett?

18 BY MR. GARRETT:

19 Q Good afternoon, Mr. Fuller.

20 A Good afternoon, Mr. Garrett.

21 Q Good to see you again.

22 A Same here.

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1 Q Unlike your father, I have never fallen
2 asleep during a football game.

3 (Laughter.)

4 A Actually, it was a baseball game.

5 (Laughter.)

6 Q The only thing I've ever fallen asleep
7 during is my cross examinations.

8 (Laughter.)

9 So if anything happens, just kick me.

10 A Well, I don't think I'll be falling asleep
11 during your cross.

12 Q I've got to tell you, Mr. Fuller, I really
13 like that point up on the board here, and I hesitate
14 to change anything. I mean, I don't want any of us to
15 get into trouble here with the math. So let me just
16 ask you to turn to Exhibit 21. That's your
17 Exhibit 21.

18 A Yes, I have it.

19 Q That's the monthly license fees charged by
20 selected cable networks, do you see that?

21 A I do.

22 Q Those are all top of the rate card

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1 numbers, aren't they?

2 A They probably are, yes.

3 Q In fact, if you look at page 17 of your
4 written testimony, it specifically says that they're
5 top of the rate card, right?

6 A I stand corrected. Yes, they are. I know
7 they are.

8 Q Does anybody pay top of the rate card?

9 A I don't know. I suppose it's negotiated,
10 that these are negotiated.

11 Q Okay. So if we're going to do the
12 calculations, then we really need to do it with the
13 actual license fees, which Kagan also provides, right?

14 A I don't know if Kagan provides actuals.

15 Q But we've already had some of those actual
16 fees --

17 A Oh, okay.

18 Q -- presented in this --

19 A Because I thought Kagan used top of the
20 rate card also.

21 Q He gave both.

22 A Oh, okay.

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1 Q I mean, that's clear. You cite Paul Kagan
2 here for top of the rate card.

3 A Right, right.

4 Q But he also gives the actual license fees.
5 And even if you substitute the actual license fees,
6 you come up with the same conclusion; the numbers just
7 aren't quite as disparate.

8 A Yes, that's what I would expect. The
9 trends would be the same.

10 Q Okay.

11 A And the trend is our point.

12 Q Okay. In your judgment, though, in order
13 to compare the relative values of the programming
14 involved in this proceeding, it's fair to take a look
15 at what cable operators are paying for these different
16 cable networks, correct?

17 A I'm sorry. Ask that again, please. I
18 missed a verb or something in there.

19 Q I'm sorry. It was a long question. I'll
20 probably make it longer this time, though.

21 A That's all right. I'll pay closer
22 attention.

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1 Q In assessing the relative values of the
2 different programming involved in this proceeding,
3 it's fair, is it not, to take a look at the license
4 fees that cable operators pay for different cable
5 networks?

6 A Well, we've proven that by including it as
7 our exhibit. So the answer is yes.

8 Q Let me also ask you, on Exhibit 34-X,
9 which is now in the record, on the first page --

10 A All right. I have it.

11 Q -- left-hand column, all the way down at
12 the bottom, the last paragraph, do you see where it
13 says, "Sports programming continues to draw the
14 largest audiences to cable"?

15 A Yes, I do.

16 Q That's consistent with your experience?

17 A Yes.

18 Q Okay. And then, on the next page, in the
19 right-hand column, right underneath the household
20 ratings for the different shows, do you see that?
21 Second page, right-hand column, right below the table
22 up at the top.

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1 A Okay. There's a paragraph.

2 Q Right. That's what I'm --

3 A You're referring to this paragraph.

4 Q Right.

5 A Okay.

6 Q "This coming season, basic cable networks
7 will spend more than \$3 billion on original
8 programming, about 52 percent of their total
9 programming expenses." Do you see that?

10 A I do.

11 Q Do you think those are good numbers?

12 A Those are numbers, I believe, that the
13 author, Beth Walsh, got from the trade press. So
14 we're dependent upon them for accuracy.

15 Q Okay.

16 A So I have to accept it at that level as
17 probably good.

18 Q Do you know where she, in particular,
19 might have obtained that data?

20 A No, I don't.

21 Q Okay. And when we talk about this coming
22 season, we're talking about 1999 to 2000, or 1998 to

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1 '99?

2 A Hmmm.

3 JUDGE VON KANN: It may help you to note
4 on the front page that the report was compiled
5 December 30, 1999.

6 THE WITNESS: It is. It's just a peculiar
7 choice of words. I'm not sure why she said that,
8 because it's a little early in the season to be
9 talking about next season, in December. And I'm not
10 quite sure what she's referring to.

11 BY MR. GARRETT:

12 Q It's probably in the general timeframe of
13 1999/2000, is that right?

14 A Yes, somewhere in there. But she also
15 could have been talking about the current season as
16 well. So it's in that ball park.

17 Q Okay. All right. Mr. Fuller, you are the
18 John W. Fuller who testified in the 1990 to '92 cable
19 royalty distribution proceeding, are you not?

20 A Yes, I am.

21 Q And you submitted written testimony as
22 well as oral testimony in that proceeding?

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1 A Yes, I did.

2 Q Okay. Let me just hand you a copy of a
3 document that we'll mark as JSC Demo Number 16, which
4 is a complete copy of your written testimony in the
5 '90 to '92 proceeding.

6 (Whereupon, the above-referred
7 to document was marked as JSC
8 Demo Exhibit No. 16 for
9 identification.)

10 Do you recognize the document, Mr. Fuller?

11 A Yes, I do.

12 Q And this was your testimony in that prior
13 proceeding?

14 A Yes.

15 Q Let me just have you turn, if you would,
16 to the bullet points that begin on page 2.

17 A All right.

18 Q These bullet points were intended to
19 summarize the written testimony, correct?

20 A That's right.

21 Q And let me direct -- well, Judge Young had
22 asked you a question about the number of U.S.

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1 households that had children under the age of 12 in
2 the 1990 to '92 period. Do you recall that?

3 A I do recall that.

4 Q And I believe that you were unable to
5 recall a specific number when that question was asked.
6 Is that correct?

7 A That's correct.

8 Q Let me just direct your attention to the
9 fourth bullet there on page 2. Do you see that?

10 A I do.

11 Q Okay. There you state that more than a
12 third of U.S. households have children under the age
13 of 10, do you see that?

14 A Under 12.

15 Q Under the age of 12, correct?

16 A I do see that.

17 Q All right. And the number that you've
18 used for the '98 to '99 period is about 28 percent,
19 correct?

20 A That's right.

21 Q Do you have any reason to believe that
22 either of those numbers is incorrect?

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1 A No.

2 Q Would it be fair to conclude from your
3 testimony that the number or the percentage of
4 households in the United States who would have an
5 interest in children's programming was somewhat less
6 in 1998 to '99 than it was in 1990 to '92?

7 A A little less.

8 Q The difference between over a third and 28
9 percent.

10 A Yes, it might be four percentage points.

11 Q Okay.

12 JUDGE YOUNG: Isn't that five percent?

13 THE WITNESS: I don't know what the actual
14 number is, though.

15 JUDGE YOUNG: And what is 33 percent as
16 opposed to 28 percent?

17 THE WITNESS: Well, I was thinking 34.
18 Oh, I'm sorry -- six.

19 JUDGE YOUNG: Six percent.

20 THE WITNESS: Six. I'm sorry. Yes. So
21 the gap would be about six points, maybe seven.

22 BY MR. GARRETT:

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1 Q Okay. Now, as I look at the bullet points
2 in your current testimony, which also begin on page 2,
3 do you see that?

4 A Of my current testimony?

5 Q Yes.

6 A Okay. I'm still in the old one.

7 Q Yes. If you just put the two of those
8 together, the '98 to '99 on the one hand, and the '90
9 to '92 on the other hand, do you see that?

10 A I'm drowning in paper. Just a moment.
11 Okay. What page of my current testimony?

12 Q Page 2. And your former testimony,
13 page --

14 A All right. I have them.

15 Q Would I be correct in saying that with one
16 exception all of the points that you make here on
17 page 2 are points that you had made in your prior
18 testimony?

19 A You're asking me whether I agree with that
20 or not?

21 Q Yes.

22 A Unless I read all of what I wrote before,

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1 I can't really answer that, Mr. Garrett.

2 Q Okay.

3 A Because it continues on to the next page,
4 and I don't know if they are, and I don't remember
5 that -- you know, that far back.

6 Q Okay. One thing that is different about
7 the testimony this time than the last time is the
8 reference to the PBS study, correct? Do you recall?

9 A Well, I haven't looked at this in a long
10 time, and I don't remember what I said about -- do you
11 mean my reference to the PBS study in the present
12 case?

13 Q Yes.

14 A And as opposed to mentioning it before
15 or --

16 Q That's right.

17 A -- not mentioning it, as the case may be.

18 Q Yes. You didn't mention it in the last
19 testimony.

20 A I did mention it?

21 Q You did not.

22 A Did not. Thank you. I'm sorry.

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1 Q Do I need to be sworn in here?

2 (Laughter.)

3 The only point I wanted to make about that
4 is is that, in fact, that study was available in the
5 last proceeding, and PBS and all the other parties who
6 were interested in that study did rely upon it, did
7 they not?

8 A I don't recall whether we did or not in
9 the --

10 Q Do you know how the Arbitrators treated
11 that study in the last proceeding?

12 A No, I don't.

13 Q Okay. So you're not here suggesting that
14 they treat -- that this Arbitration Panel treat it any
15 differently than it was treated the last time around?

16 A I don't know how they treated it last
17 time.

18 Q Okay.

19 A So --

20 Q That's fine. Also, as I compare the two
21 summaries, I guess one other difference is is that you
22 discussed the Bortz study the last time and not this

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1 time, correct?

2 A That's correct.

3 Q I'll have marked as JSC Exhibit 24-X a
4 document that we received from PBS in discovery.

5 (Whereupon, the above-referred
6 to document was marked as JSC
7 Exhibit No. 24-X for
8 identification.)

9 JUDGE GULIN: You're not finished with
10 Demo 16, are you?

11 MR. GARRETT: No. I actually was going to
12 ask other questions, but go ahead, if you have a
13 question.

14 JUDGE GULIN: And you may have just been
15 getting into this -- I'm not sure -- you talk -- when
16 you talk about Bortz -- first of all, has this been
17 designated, this testimony, by --

18 MR. GARRETT: I'm sure that we designated
19 it, and I believe that PBS has noted it as well. I'm
20 not certain about that.

21 MR. HESTER: I can check, Your Honor.

22 JUDGE VON KANN: Are you planning to come

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1 back to this in some way a little bit later in the
2 testimony?

3 MR. GARRETT: I did have some other
4 questions at some point in time. But as I say, go
5 ahead.

6 MR. HESTER: It is designated in our -- as
7 part of our case as something we incorporated in the
8 prior proceeding.

9 JUDGE GULIN: I'll tell you what. You go
10 ahead and ask your questions, Mr. Garrett, and I'll
11 see what you ask him and then --

12 MR. GARRETT: I guess now I'm on the hook
13 to ask him some questions about this.

14 (Laughter.)

15 JUDGE VON KANN: Right.

16 BY MR. GARRETT:

17 Q First, I wanted to talk about 24-X. It
18 bears the Bates Stamp Numbers of PTV 002566, 2567, and
19 then it's 002081 through 2092. And I believe it's all
20 one document, but we received it at different times
21 from PBS. Are you familiar with this document, Mr.
22 Fuller?

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1 A I'm familiar with some '98 and '99
2 documents. I don't think I've seen these '97s.

3 Q Well --

4 A And I have seen the '92.

5 Q Let me just tell you my understanding, and
6 you correct me if I'm wrong. As I understand it, this
7 is a printout that was generated by Cable Data
8 Corporation, is that right?

9 A That's right.

10 Q And it was generated for PBS?

11 A That's right.

12 Q And it was generated for PBS in connection
13 with this particular proceeding, correct?

14 A Yes.

15 Q And the data in here are data that
16 underlie various statements by you, and I think also
17 Dr. Johnson, concerning the carriage of public
18 television signals?

19 A That's correct.

20 Q And as I understand it, if we go to the
21 first line here, it says zero fully distant and zero
22 partially distant and one local, do you see that?

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1 A I do.

2 Q My understanding of that is that means
3 that this is the number of cable systems that had no
4 distant educational stations, no partially distant
5 educational stations, and one local educational
6 station during the second accounting period of 1992.

7 A Yes, that's my understanding as well.

8 Q Okay. And so what this would show is that
9 there were, during that accounting period, 1,002 cable
10 systems that had no distant, no partially distant, but
11 one local educational station, correct?

12 A Yes.

13 Q And you had some conversations with the
14 Panel early on today about the numbers of cable
15 systems that fell within different categories, do you
16 recall that?

17 A Yes.

18 Q Okay. As I understand it, if I look at
19 the second column, it says Total Unique Subscribers,
20 do you see that?

21 A I do.

22 Q And that would show the number of unique

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1 subscribers to those 1,002 cable systems, correct?

2 A That's right.

3 Q And the next column says Distant
4 Subscriber Instances Adjusted, do you see that?

5 A Yes.

6 Q And we see a zero there because there, in
7 fact, were no distant signals carried by those 1,002
8 -- I'm sorry, no distant educational signals --

9 A Correct.

10 Q -- carried by those 1,002 cable systems,
11 right?

12 A Yes.

13 Q So if we wanted to determine, for example,
14 the number of educational -- the number of cable
15 systems that carried distant educational stations for
16 any particular accounting period, we could do that
17 from these data, right?

18 A Yes, that's right.

19 Q Now, let me ask you to turn to your
20 Exhibit 15.

21 A All right. I have it.

22 Q Just hold that there. Incidentally, what

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1 is your understanding of the term "partially distant"
2 as used in this printout here?

3 A Well, it's a situation where part of the
4 subscribers to a given system are in a distant zone
5 with respect to a particular station. Not all of them
6 are distant, but part of them are, based on whatever
7 the rule is about coverage.

8 Q Is it a situation where the particular
9 signal would be distant in one portion of the cable
10 system and local in the other portion of the cable
11 system?

12 A That's right. Yes, that's --

13 Q And the portion where it was local, it
14 would be a must carry, correct?

15 A Now, I don't know the must carry rules
16 very well. I can't answer that affirmatively. I just
17 don't know.

18 Q All right. So you're not familiar with
19 the must carry rules at all?

20 A No, I'm really not.

21 Q And you don't know how they would affect
22 carriage patterns of particular cable systems and the

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1 distant signals that they carry?

2 A No. No, I'm sorry.

3 Q Okay. Now, in Exhibit 15, you discussed
4 earlier in your testimony today -- you talked about
5 how the number of cable systems that carried distant
6 educational stations had increased from 1992, correct?

7 A Yes, I did say that.

8 Q All right. If you look at Exhibit 15, we
9 see, for example, in 92-2 there were 473 cable systems
10 that carried one or more distant educational stations,
11 right?

12 A That's right.

13 Q And then, 514 during the second accounting
14 period of 1998, correct?

15 A Right. And then it jumped again up to
16 534.

17 Q Right. Now, if we broke these numbers
18 down between cable systems that carried only fully
19 distant signals as opposed to any partially distant
20 signals, do you know what the numbers would be?

21 A Are you talking about systems or
22 subscribers?

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1 Q I'm just looking at the column here that
2 says --

3 A Just --

4 Q -- total systems with distant
5 retransmissions.

6 A Yes, I don't know the number of systems.

7 Q Okay.

8 A In this chart.

9 Q But we would be able to calculate that
10 number, would we not, by going to --

11 A Yes.

12 Q -- JSC Exhibit Number 24-X?

13 A Yes.

14 Q All right.

15 A I'm sorry. JSC 24-X? Which is the one --
16 that's this one.

17 Q That's the one --

18 A Yes. Yes, you could.

19 Q Okay. And let me just represent to you
20 that we've done some very quick calculations that
21 would all be subject to check, but it shows that in
22 92-2 there were 395 Form 3 systems that carried one or

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1 more educational stations on a fully, not partially,
2 distant basis.

3 A All right.

4 Q Okay?

5 JUDGE VON KANN: What was that number?

6 MR. GARRETT: 395.

7 BY MR. GARRETT:

8 Q And that in 1998-2, that number had
9 actually decreased to 370. And then, in 99-2, it went
10 up, but not to its '92 level, to 389. Would that be
11 consistent with your understanding, Mr. Fuller, that
12 when we see increases here in cable systems carrying
13 distant educational stations, those increases were
14 from partially distant carriage as opposed to fully
15 distant signals?

16 A It looks like most of it, therefore, would
17 be from partially distant systems.

18 Q Okay.

19 A Most of the increase.

20 Q All right. And, again, you're not
21 familiar with the must carry rules and how they might
22 have impacted the carriage patterns of distant

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1 educational stations.

2 A No, I'm not really.

3 Q Okay. And, again, I guess if we wanted to
4 have it for the full record, we could do these same
5 calculations for all of the different periods that are
6 reflected here in JSC Exhibit Number 24-X, right?

7 A Right.

8 Q Let me ask you about one other
9 calculation. We've talked a little bit about the
10 number of Form 3 cable systems that had no local
11 signals, no local educational stations, right?

12 A I'm sorry. Ask that one more time.

13 Q Well, it didn't come out quite right. Let
14 me ask it this way.

15 MR. GARRETT: Do you want to keep going
16 here?

17 JUDGE VON KANN: I was sort of thinking
18 3:30, but if you're at a good place and you'd like to
19 do it now, that's fine. I don't care much.

20 MR. GARRETT: This next little part will
21 probably go longer than --

22 JUDGE VON KANN: It will take a while?

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1 All right. Why don't we take a 15-minute break, come
2 back at 3:40 here.

3 (Whereupon, the proceedings in the
4 foregoing matter went off the record at
5 3:26 p.m. and went back on the record at
6 3:52 p.m.)

7 MR. GARRETT: Let me just take care of a
8 couple of housekeeping matters. First of all, I'd
9 like to move the admission of 24-X for substantive
10 purposes.

11 JUDGE von KANN: Mr. Hester?

12 MR. HESTER: We have no objection to that,
13 Your Honor.

14 JUDGE von KANN: All right. So received.

15 (Whereupon, the above-referred
16 to document, previously marked
17 as JSC Exhibit No. 24-X for
18 identification, was admitted
19 into evidence.)

20 MR. GARRETT: Secondly, I have distributed
21 to the Panel and all counsel a document that has been
22 marked as JSC 25-X.

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1 (Whereupon, the above-referred
2 to document was marked as
3 JSC Exhibit No. 25-X for
4 identification.)

5 MR. GARRETT: It is exactly -- well, it's
6 exactly the same format as 24-X except that it has one
7 additional column of information, which is the total
8 royalties paid by the cable systems in each of these
9 different categories. It also differs in the sense
10 that it was run for JSC as opposed to Public
11 Television and it was run recently as compared to 24-X
12 which was run obviously several months ago. And I'll
13 have some questions on it. I've asked counsel in the
14 interim here whether he would agree to allow that one
15 in as well for substantive purposes even though it has
16 a different column of information -- an additional
17 column of information, I should say.

18 JUDGE von KANN: Let's take the questions
19 and then find out where we are at the end of that,
20 unless you -- you do have questions about it?

21 MR. GARRETT: I was going to use some of
22 the data in there.

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1 JUDGE von KANN: In questioning the
2 Witness.

3 MR. GARRETT: Yes.

4 JUDGE von KANN: Well, let's do that, and
5 then we'll see what Mr. Hester's position is.

6 MR. GARRETT: Okay. I've also distributed
7 just to save time here JSC Demo Number 17, which is
8 actually PTV Exhibit 15 from the -- I'm sorry, PTV
9 Exhibit Number 24 from the 1992 proceeding.

10 (Whereupon, the above-referred
11 to document was marked as
12 JSC Demo 17 for identification.)

13 JUDGE von KANN: Okay.

14 BY MR. GARRETT:

15 Q All right. Mr. Fuller, you talk in your
16 '98-'99 testimony as well as the '90 to '92 testimony
17 about the two broad classes of cable operators: Those
18 who have no public television signal available locally
19 and those who do, correct?

20 A Yes.

21 Q And you give us some data about each of
22 those categories.

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1 A Right. Right.

2 Q I'm going to just put up here a chart to
3 reflect those categories and call it cable systems
4 with distant public television, okay?

5 A Yes, I see it.

6 Q And then one category, I'll just call it
7 Category A, has zero local PTV, okay?

8 A Okay.

9 Q And the second category will have one or
10 more local PTV, okay?

11 A All right.

12 Q Now, you talk about the very significant
13 value that distant public television signals have to
14 cable operators in Category A, correct?

15 A Right, because that's the only public
16 television signal they have.

17 Q Right. And you also talk about the value
18 that a distant public television station would have to
19 cable operators in Category B, correct?

20 A That's right, I do.

21 Q Okay. Would you agree that the cable
22 operators in Category A would place the greatest value

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1 on distant public television signals between these two
2 categories?

3 A Well, it's guessing, but I would say
4 logically probably many or most of them do, yes.

5 Q And that's because they don't have any
6 local public television. The only --

7 A That's right.

8 Q -- way they're getting --

9 A Is by distant.

10 Q Okay. And if you were trying to sell one
11 of these signals to a cable operator, you would come
12 in and pitch it as saying, "I'm going to give you
13 something that you don't have locally," right?

14 A Of course.

15 Q And with Category B, the pitch would be,
16 "Well, I may be giving you some programs that are
17 duplicative but they are on at different times of the
18 day. I'm giving you some new programs that you might
19 have on the local signal," right?

20 A That's right. You have it exactly right.

21 Q You know, after 20 years, I would know.

22 A Thank you --

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1 Q I've heard it several times.

2 A -- for stating my case.

3 Q But as a general matter, those cable
4 operators in Category A are going to value your
5 signals greater than those who are in Category B.

6 A As a general matter, yes.

7 Q Okay. Now, if I look at the 1990 to '92
8 period and I focus in particular on your Exhibit I
9 guess it's 24, which is JSC Demo 17 --

10 A Okay. I have it.

11 Q -- the percentage of Form 3 cable
12 operators who would fall within that Category A would
13 be 52.6 percent, correct?

14 A Yes.

15 Q And, conversely, the percentage that would
16 fall within Category B would be 47.4 percent, correct?

17 A That's right.

18 Q And those are the numbers that are shown
19 either directly or by implication there on your
20 Exhibit 24.

21 A Right. Right.

22 Q Right?

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1 A Yes, I have that.

2 Q And then for 1998-99, the number of -- the
3 percentage of cable operators who fall within Category
4 would be 49.5 percent; is that right?

5 A That's right. And 50.5 for the other.

6 Q Okay. Now, the difference is not very
7 large?

8 A No, it's not.

9 Q Okay. But it does -- if it shows
10 anything, it shows that the percentage of cable
11 operators who value distant public television stations
12 the most has declined slightly from 1990 to '92.

13 A Yes, it has a little bit, and, again, I
14 told you I don't know very much about must-carry, but
15 that may have had something to do with it, because I
16 know it came in somewhere in between.

17 Q Okay. You also give numbers in your '90-
18 '92 and '98 to '99 testimony about the number of
19 subscribers that fall within each of those categories,
20 correct?

21 A Well, I don't recall saying that. I
22 haven't read through my old testimony.

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1 Q All right.

2 A Is there a page that I should refer to?

3 Q Yes. Let's look, first of all, at '98 to
4 '99, and we go to Page 2, your first bullet point,
5 which I believe was a corrected number. Isn't that
6 3.6 percent of --

7 A Yes, it is. That's correct.

8 Q Okay. Now, we're looking at -- the cable
9 subscribers for '98 to '99, you're showing -- these
10 numbers are not going to be comparable, and I don't
11 mean to suggest that they are, but it's 3.6 percent of
12 all distant subscribers would be getting a distant
13 public television signal where there is no local
14 public television signal, correct?

15 A Yes, that's right.

16 Q Okay. And for the other Category B, the
17 number would be 6.7 percent, correct?

18 A That's right. That's the percent of total
19 cable subscribers.

20 Q Right.

21 A Right.

22 Q And then we want to get the comparable

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1 numbers from '90 to '92 we could go to your testimony
2 from '90 to '92, Page 2 --

3 A Third bullet.

4 Q Right. And the Category A subscribers
5 would be 4.6 percent?

6 A That's correct. And Category B is 5.7
7 percent.

8 Q So what we see is that those in Category
9 A have declined somewhat in the '90 to '92 period,
10 correct, their percentage, I guess?

11 A Yes. There's a one percentage point shift
12 that went from Category A to Category B. These
13 increased.

14 Q Right. Right. Thank you. Now, if I turn
15 to Exhibit 25-X that we had marked, and we could
16 determine from that the total number of cable systems
17 that carried distant public television signals that
18 had no local public television signals available,
19 correct?

20 A That's right.

21 Q And the way we would do that is we would
22 go down that first column looking for all the places

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1 where -- all the lines where we saw zero local,
2 correct?

3 A Yes.

4 Q And tally that up. I've done that
5 quickly, and, again, subject to check, but it appears
6 that at least in 98-2 there were about 255 cable
7 systems that carried one or more distant public
8 television stations and had no local public television
9 stations available. Does that number sound about
10 right to you?

11 A I haven't done that exercise, Mr. Garrett.
12 So you say 255 by your addition --

13 Q Yes.

14 A -- of all of those that carried a distant
15 public station but no local.

16 Q That's correct. And it could be carried
17 distant either on a partial basis or on a --

18 A Okay.

19 Q All right. You haven't done the
20 calculation so you can't tell me whether or not it's
21 right around --

22 A No.

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1 Q -- but we could make that calculation from
2 this document here.

3 A Yes, you can from this.

4 Q And we could also determine from both 24-X
5 and 25-X the number of subscribers to those systems
6 that had no local public television signals but did
7 have distant public television signals, correct?

8 A Yes.

9 Q And we could determine but only from 25-X
10 the amount of royalties, the total royalties that
11 those systems paid, correct?

12 A That's what this says, yes.

13 Q Okay. I guess I could say at this point
14 I would move 25-X for substantive purposes.

15 MR. HESTER: Well, Your Honor, I would
16 object to that for two reasons. First, 25-X is not a
17 document that underlies Mr. Fuller's testimony, and we
18 did not produce it for that purpose. More
19 importantly, these royalty numbers are subject to a
20 lot of assumptions because of the difficulties
21 presented by the minimum royalty payments that all
22 Form 3 systems have to make. And if you've had a

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1 chance to look at Dr. Johnson's testimony, for
2 instance, he discussed very wide variation in the
3 amount of fees that would be attributed to distant
4 signal carriage of PBS based on different assumptions
5 that would be made about what royalties go into which
6 pot. So I think Mr. Fuller is not properly a
7 sponsoring witness for the royalty column, which is
8 the only additional information in 25-X and it's not
9 simple.

10 JUDGE von KANN: Okay.

11 MR. GARRETT: Sorry.

12 JUDGE von KANN: No, go ahead.

13 MR. GARRETT: Go ahead? I want to say I
14 agree, in part, with Mr. Hester, and I disagree, in
15 part, with Mr. Hester. I agree with him that I think
16 that under the procedure we're following here that it
17 should be admitted for just impeachment purposes and
18 not as a substantive document. That's one.

19 Two, I believe Mr. Hester misunderstands
20 the information that I've given here and it's my fault
21 for not being clear. We have not tried to assign
22 royalties to any particular category of signal, which

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1 is I think the concern that Mr. Hester has. This is
2 the total amount of royalties paid by the total number
3 of cable systems in this particular column. In much
4 the same way as he has total number of subscribers
5 we've just said, these systems have this total amount
6 of royalties, and this is not an attempt to generate
7 or to show fee generation that has been used in this
8 proceeding.

9 And the third point I would say is, look,
10 he could be right on impeachment versus substantive,
11 but these are data that are taken directly from a
12 common data source here. We have not manipulated that
13 in any way. We have simply put one more column of
14 information that is, we think, important for the Panel
15 to have in deciding this case. And I would ask again,
16 I made this offer earlier, that parties stipulate to
17 those kinds of numbers, subject to check from Mr.
18 Larson, but I think it's important to have that kind
19 of data in the record.

20 JUDGE von KANN: I think I heard you say
21 at the beginning of that that you're offering it for
22 impeachment at this stage?

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1 MR. GARRETT: No, I was offering it for
2 substantive purposes, and, again, giving Mr. Hester
3 the opportunity to check the data and put in what --
4 we can argue about the relevance of the data as we go
5 on, but I don't think there should be any question
6 about the data. They've given three columns of
7 information, I've just given the fourth.

8 JUDGE von KANN: We'll receive at this
9 point for impeachment purposes. Obviously, if you
10 think it's important for us to have that, you can put
11 it on in rebuttal. And you're right, this issue has
12 come up from time to time about the parties
13 stipulating some of this data, but at this point it
14 hasn't been resolved to my knowledge, and we're not
15 forcing that on anybody at this juncture. So we'll
16 receive it for impeachment purposes.

17 MR. GARRETT: Okay.

18 (Whereupon, the above-referred
19 to document, previously marked
20 as JSC Exhibit No. 25-X for
21 identification, was admitted
22 into evidence.)

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1 MR. GARRETT: I think I am done now with
2 the '90 to '92 testimony, Judge Gulin. You said you
3 have a question.

4 JUDGE GULIN: Mr. Fuller, I'd like to ask
5 a couple questions about what's been marked as JSC
6 Demo 16, your testimony from the 1992 proceeding, if
7 you could get a hold of that.

8 THE WITNESS: I have it.

9 JUDGE GULIN: I know I'm testing your
10 memory a little bit here but I think that some of the
11 matters you brought up then could be very instructive
12 to the Panel for this proceeding even though you
13 didn't discuss it in your testimony this time. Pages
14 4, I think, 4 through about 7, you talk about what you
15 think you were some appropriate adjustments that
16 should have been made. I don't know if they were
17 made, I don't remember the final decision in the '92
18 decision that well, but you talk about a couple of
19 adjustments that needed to be made with respect to
20 PBS, Public Television Share, under the Bortz study.
21 And the first one I want to ask you about is actually
22 discussed at the bottom of Page 5. Could you just

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1 read a little bit of that to yourself to refamiliarize
2 yourself with it, please.

3 THE WITNESS: All right, I am. The
4 paragraph beginning with, "Because PBS?"

5 JUDGE GULIN: Yes, sir.

6 THE WITNESS: All right.

7 JUDGE GULIN: Let me know when you're
8 finished that.

9 THE WITNESS: All right. All right, I'm
10 finished.

11 JUDGE GULIN: Okay. Your point here is
12 that an adjustment should be made to the Bortz -- to
13 the PBS Bortz share because PBS only is permitted to
14 participate in the Basic Fund and not the 3.75 Fund.
15 That's basically your point here, correct?

16 THE WITNESS: That's right.

17 JUDGE GULIN: Now, I assume, first of all,
18 that Public Television is unique in this proceeding in
19 that it's the only claimant group that cannot
20 participate in the 3.75 Fund.

21 THE WITNESS: I don't recall.

22 JUDGE GULIN: You don't know if that's

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1 true or not.

2 THE WITNESS: I really don't know.

3 JUDGE GULIN: Okay. Well, I recall the
4 cross examination Mr. Dove conducted of Dr. Rosston.
5 Do you know who he is?

6 THE WITNESS: No, I don't.

7 JUDGE GULIN: All right. He sponsored the
8 regression analysis, which you may or may not be
9 familiar in this proceeding.

10 THE WITNESS: Yes, I'm sorry, I don't.

11 JUDGE GULIN: It doesn't really -- I'm
12 sorry, it doesn't matter.

13 THE WITNESS: Okay.

14 JUDGE GULIN: But he made the same point
15 with respect to the regression analysis, that because
16 PBS does not participate in the 3.75 Fund, some of an
17 adjustment would be made, and he went through a
18 calculation. And Dr. Rosston had proceeded to agree
19 with him that that would be appropriate. Now, that
20 was with respect to this other type of analysis that
21 was new this year. Here we're talking about Bortz,
22 which is also part of this proceeding, and I read

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1 through your testimony, it's the first time I've seen
2 it, and I'm having a little trouble understanding it,
3 frankly, as to why you think there should be an
4 adjustment to Bortz because they don't participate in
5 the 3.75 Fund, Public Television. Can you explain
6 that to us?

7 THE WITNESS: Well, it wasn't that so
8 much. I really am not that familiar -- I don't recall
9 whether the 3.75 Fund is even still applicable today
10 or in '98-'99. I'm just not that up to speed on that
11 subject. Our concern in the Bortz study is some of
12 the methodology or the --

13 JUDGE GULIN: That's all right. I don't
14 want to get into that.

15 THE WITNESS: Okay. Okay.

16 JUDGE GULIN: I just wanted to know if you
17 remembered your argument with respect to this
18 particular adjustment, t he 3.75 Fund.

19 THE WITNESS: I'm sorry, I just don't.

20 JUDGE GULIN: Okay,.

21 THE WITNESS: It's been too long.

22 JUDGE GULIN: And I guess you also don't

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1 recall, I would guess, whether the librarian accepted
2 that argument or not.

3 THE WITNESS: I don't recall.

4 JUDGE GULIN: Okay. Fair enough. There
5 was another adjustment and that's on the bottom of
6 Page 4, beginning on the last paragraph, "As discussed
7 in the testimony of Dr. William Fairley."

8 THE WITNESS: You're in my earlier
9 testimony now, correct

10 JUDGE GULIN: Yes.

11 THE WITNESS: Okay. Page 4?

12 JUDGE GULIN: Yes.

13 THE WITNESS: All right. I have it. Oh,
14 yes.

15 JUDGE GULIN: Do you remember that
16 argument?

17 THE WITNESS: Yes. That's a similar one
18 we have now.

19 JUDGE GULIN: Yes. I remember Mr.
20 Hester's cross examination in this regard of one of
21 the Sports witnesses in making a similar argument. I
22 guess what got me a little confused was I thought the

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1 testimony was during that cross examination and the
2 prior proceeding none of the cable operators -- none
3 of the PBS programming was automatically assigned a
4 zero. They were automatically assigned a zero, but
5 none of them happened to be in the sample. Am I
6 confused about that?

7 MR. HESTER: Should I clarify it?

8 JUDGE GULIN: Yes. I would appreciate it.

9 MR. HESTER: And Mr. Garrett should jump
10 in.

11 MR. GARRETT: I will.

12 MR. HESTER: There were two issues I
13 discussed with Dr. Trautman. One was this automatic
14 zero adjustment when a system did not carry a public
15 television distant signal it was automatically given
16 a zero. That's the issue discussed here in Mr.
17 Fuller's prior testimony.

18 The point that we were pressing as a new
19 feature this time, although in fairness Dr. Trautman
20 said it was part of his method before but it hadn't
21 been presented in the data previously until this
22 proceeding, was the exclusion from the sample of a

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1 system that only carried a PTV signal, and that was
2 the point that was different in the data, as Dr.
3 Trautman said, not in the method but in the data.

4 JUDGE GULIN: Okay. I got you now. So
5 the same issue, I guess, is applicable this time.

6 MR. HESTER: Yes.

7 JUDGE GULIN: Well, I've got you
8 testifying, what happened with respect to this other
9 argument that I mentioned before. Was that accepted
10 or rejected by the librarian?

11 MR. HESTER: The 3.75 adjustment was not
12 accepted by the Panel.

13 JUDGE GULIN: Okay.

14 MR. HESTER: The automatic zero was. But
15 this is something that Dr. Johnson is going to
16 discuss. Frankly, we haven't done as much with the
17 Bortz study in our direct case because we didn't have
18 the results --

19 JUDGE GULIN: Yes, I understand.

20 MR. HESTER: -- at the time we submitted
21 our direct case this time through.

22 JUDGE GULIN: All right. Thank you.

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1 JUDGE von KANN: Your point on the -- I
2 don't want to take a lot of time, but your point on
3 this 3.5 business is that the Bortz number purports to
4 be an overall share of the royalty.

5 THE WITNESS: Yes.

6 JUDGE von KANN: And if that were only
7 applied to the part of the Royalty Fund, that is the
8 Basic Fund, that you participate in, you wouldn't get
9 to that number for the total, because you wouldn't be
10 participating in the Basic side.

11 THE WITNESS: Yes. Exactly right. It was
12 an argument that frankly was not -- I think it was
13 misunderstood, I mean in our view. I mean people can
14 -- in our view, it was perceived as an adjustment to
15 the Bortz results, and our point was it wasn't an
16 adjustment to the Bortz results, it was an
17 application, what you did with the survey results. We
18 weren't adjusting the study.

19 JUDGE GULIN: Well, I don't understand it,
20 so I hope you'll -- I understand how it applies to the
21 regression analysis, but I just don't understand why
22 it would apply to the Bortz analysis.

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1 MR. HESTER: Okay.

2 JUDGE GULIN: You'll educate me at some
3 point.

4 MR. HESTER: Yes. And I think Dr. Johnson
5 will be able to speak to that, and it's certainly
6 something we understand we have to come in our
7 rebuttal case on that issue.

8 JUDGE GULIN: Okay. All right.

9 MR. GARRETT: If I could just add, Mr.
10 Hester points out it was that adjustment, the one we
11 were just talking about was dealt with by the
12 arbitrators on Pages 120 and 1124 of the CARP report.
13 One-twenty describes the argument and 124 rejects it,
14 and I believe, but Mr. Hester will correct me if I'm
15 wrong, that that was one of the issues that was
16 assigned on appeal to the librarian. Is that not
17 correct? I think that the librarian ruled on that as
18 well.

19 JUDGE GULIN: And upheld the Panel?

20 MR. GARRETT: Upheld the Panel on that
21 one. And with respect to the other argument that
22 adjustment describes, that also was discussed in the

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1 CARP report, and the CARP said in that particular
2 case, and we've given you the pages on this earlier,
3 basically said that since nobody had seemed to oppose
4 it in that proceeding, that they were going to accept
5 it, and that was the source of the six percent numbers
6 that the arbitrators had put in their report.

7 JUDGE GULIN: Okay. I apologize for
8 getting into this kind of oral argument, but
9 occasionally there's something just gnawing at me that
10 I have to get rid of, and I don't want to wait till
11 the end of proceeding before I understand it.

12 MR. GARRETT: I hope you've gotten rid of
13 it.

14 (Laughter.)

15 JUDGE YOUNG: Well, I'm going to test Mr.
16 Garrett's knowledge of the CARP report and just ask
17 him what did the Panel do and where is it with respect
18 to this Sieber survey or anyone else?

19 MR. GARRETT: It was discussed -- it was
20 something that I know PBS relied upon in their
21 proposed findings in the case, and I believe NAB did
22 and the Program Suppliers as well. I think we all

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1 ended up discussing it, but I don't recall --

2 JUDGE YOUNG: You know, I don't mean to
3 put everybody through this. I'll look for it later.
4 I just thought if someone knew offhand. Did the Panel
5 credit it?

6 MR. GARRETT: I think the Panel took it
7 into consideration. I mean it was never offered as a
8 bottom-line analysis as such, so people just took out
9 of the survey whatever they thought would be useful to
10 their case, and it was cited to the Panel, but I don't
11 think it ever had any -- well, I shouldn't say, no; we
12 should read it.

13 MR. HESTER: I mean Mr. Garrett's right
14 that we cited it in findings, but we did not present
15 it the way we presented it this time.

16 JUDGE YOUNG: Okay. I'll look for it.
17 Thanks.

18 MR. HESTER: It is -- oh, yes, I see, it's
19 33 to 34.

20 JUDGE YOUNG: Well, I see he -- I was,
21 generally, the Panel described it. I was looking for
22 the analysis.

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1 MR. STEWART: Page 42 is where they would
2 have addressed it, 42, 43 and 44. And they don't
3 appear to have resolved it at that point.

4 JUDGE YOUNG: Did not resolve it.

5 MR. STEWART: Correct. Didn't address it
6 in 1999 determination, final observation.

7 JUDGE YOUNG: Okay. Let's go back to the
8 testimony. Unless Judge von Kann wants --

9 JUDGE von KANN: No. No. No.

10 BY MR. GARRETT:

11 Q Mr. Fuller, let me just direct your
12 attention to your '98-'99 testimony here on Page 3.

13 A All right.

14 Q You say here the retransmission of a
15 distant public television signal is vitally important
16 to cable operators that do not have a local public
17 television signal to offer to their subscribers,
18 correct?

19 A Correct.

20 Q And that's what we were discussing a few
21 minutes ago.

22 A Right here on the board.

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1 Q Okay. Would you agree that it's vitally
2 important to cable operators that don't have access to
3 a local Fox signal to offer that signal to its
4 subscribers?

5 A I don't know how I could answer that, Mr.
6 Garrett. I don't know. I know how much people value
7 our service, and I'm pretty sure the cable operators
8 do too because of the nature of our content. And I'm
9 not that familiar with Fox. Fox I think provides only
10 a fairly small portion of a day's program schedule, so
11 the rest of it would be up to the station itself to
12 fill. So I'm not sure I could answer that one way or
13 the other.

14 Q All right. You can't help us compare
15 public television with programming on Fox, I take it.

16 A I wouldn't want to. Sorry.

17 Q You did testify earlier that cable
18 networks would want to broadcast networks, they want
19 to be able to carry the broadcast networks?

20 A Yes.

21 Q But were you not including Fox within that
22 category?

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1 A All right. In fairness, yes. I was
2 thinking of Fox in those terms. The context was size
3 of audience, and for their programming they have a
4 fairly good-sized audience, not as big as the three
5 majors. So, yes, I would think that a cable operator
6 would want to include them.

7 Q One of the things that I thought was
8 driving your testimony here about cable operators
9 wanting a distant public television signal when they
10 didn't have a local was that there was some
11 programming that you consider very valuable
12 programming that's out there that they just didn't
13 have locally, right?

14 A That's right.

15 Q Wouldn't those same considerations apply
16 if you had a community where there was no local Fox
17 signal and as a result you couldn't get, for example,
18 the NFL telecast or the Major League Baseball telecast
19 or the NHL telecast on Fox?

20 A Well, that would certainly be programming
21 that many people are interested in that would not be
22 available locally if they did not bring it in. I

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1 would agree with that.

2 Q And in that case, having brought in a
3 distant Fox signal where there is no local Fox signal
4 --

5 A Right.

6 Q -- would be valuable to the operator.

7 A Yes.

8 Q In much the same way that bringing in the
9 distant public television station would be valuable.

10 A Yes. Although we have a more complete
11 schedule that we provide to a cable operator. There's
12 more than what Fox provides, I believe --

13 Q Sure.

14 A -- including the children's service,
15 including the big variety of programming we have. Fox
16 tends to focus on entertainment programming, and ours
17 is a variety of things.

18 Q And we talked earlier about how there are
19 about 255 cable systems that imported a distant public
20 television station where there was no local public
21 television station, correct?

22 A Yes.

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1 Q And those 255 cable systems had a total of
2 about \$3.7 million in royalties according to JSC 25-X.
3 Do you accept that number?

4 A Let me find it again before I agree with
5 that. Sorry, I'm losing track --

6 MR. HESTER: Let me object to the question
7 in so far as Mr. Garrett's representing a statement of
8 fact that I don't think has been put into evidence.

9 MR. GARRETT: Well, I thought I was doing
10 what's been done throughout the proceeding here. We
11 have an exhibit here I think will support that number.
12 I was making representation based on that number,
13 again subject to my check.

14 JUDGE von KANN: I'm assuming
15 hypothetically that the calculations come out this
16 way.

17 MR. GARRETT: Sure.

18 JUDGE von KANN: All right. Overruled.

19 MR. GARRETT:

20 Q Assume that there were 255 Form 3 cable
21 systems that have no local public television stations
22 but carried a distant public television station. Will

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1 you assume that for me?

2 A Yes.

3 Q And that those 255 cable systems paid
4 about \$3.7 million in royalties for the 1998-2
5 accounting period.

6 A Nineteen ninety-eight-2, is that what you
7 said?

8 Q Yes.

9 A Well, I'll have to take your word for
10 that.

11 Q Again, I think we all should probably do
12 the calculations, but we also have an exhibit that was
13 put in NAB that showed that there are 100 Form 3 cable
14 systems in 98-2 who had no local Fox signal and
15 carried a distant Fox signal, and they paid a total of
16 about \$2.7 million in royalties. Can you accept that
17 for me?

18 A I'll accept it based on this document and
19 that your calculator had a battery in it.

20 MR. GARRETT: Did my calculator have a
21 battery in it?

22 PARTICIPANT: Indeed.

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1 JUDGE von KANN: And you punched the right
2 buttons.

3 MR. GARRETT:

4 Q But you see some similarities, would you
5 not, between those two groups of cable systems?

6 A Yes. Yes. Sounds like the Fox stations
7 were carried on larger systems.

8 Q Right. But in both cases, the cable
9 systems were importing something --

10 A Right.

11 Q -- that was not there available in the
12 community, correct?

13 A Yes. Yes.

14 Q I wanted to ask you received some
15 questions from the Panel earlier about the program
16 duplication study that you did for '98 to '99.

17 A Yes.

18 Q And, again, I think you -- when you chose
19 the particular systems you were not making any
20 scientific random sample, were you?

21 A That's correct. I was just trying to get
22 a geographic spread and just handpicked them out of a

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1 list.

2 Q All right. So you're not, as a
3 professional researcher, projecting the results of
4 this particular research here to the entire universe
5 of cable systems, are you?

6 A No. The reason we included it at all is
7 because it pointed in the same direction as the
8 earlier, more rigorous studies.

9 Q Okay. And in your view, the examination
10 that you conducted here of those cable systems for the
11 '98 to '99 period led you to believe that there is no
12 significant change in the amount of duplication of
13 public television programming from the earlier
14 periods.

15 A That's correct.

16 Q Okay.

17 A Very similar pattern.

18 Q All right. Let me have marked as JSC
19 Exhibit Number 26 a series of pages that we received
20 from Public Television in discovery.

21 (Whereupon, the above-referred
22 to document was marked as

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1 JSC Exhibit No. 26-X for
2 identification.)

3 Q Mr. Fuller, have you had an opportunity to
4 take a look at what's been marked as JSC Exhibit
5 Number 26-X?

6 A Okay. Yes, I have.

7 Q That document look familiar to you?

8 A It looks like our data. I'm not sure who
9 typed it up, and I don't recognize the handwriting on
10 it.

11 Q That's not your handwriting?

12 A Oh. No, it's not. But it looks like our
13 data. I mean we set it up this way.

14 Q Right. And for the record, this bears the
15 Bate stamp numbers PTV000396 on the first page, 397 on
16 the second page, 454 on the third page and 477 on the
17 fourth page. Were these the particular cable systems
18 that you had studied as part of this '98-'99
19 duplication analysis?

20 A Yes, I believe they are.

21 Q Okay. On the first page, there is no
22 indication of which cable systems these signals were

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1 carried on. Do you know which ones they were carried
2 on?

3 A No, I don't. I mean that puzzles me. I
4 don't know why it's not on here.

5 Q Okay. And on the second page, we do see
6 the cable systems in Ashford, Connecticut, Milford,
7 Pennsylvania.

8 A Right.

9 Q Rensselaer, Indiana.

10 A I have a clean exhibit. I mean why are we
11 looking at this stuff? Well, go ahead, I'm sorry.
12 It's your questioning.

13 Q All right. Can you just tell me whether
14 all of these particular cable systems were the ones
15 that were included within your study?

16 A This is the one I was referring to under
17 18 of my exhibits. I'll have to check. The last page
18 is a little hard to follow because someone has
19 handwritten different names from what I have in my
20 exhibit. I'm not quite sure why, but I think these
21 are the same pairs of stations being compared in spite
22 of what the name of the city may be.

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1 Q All right. But looking at Exhibit 18,
2 does it help you determine what communities are
3 represented by that first page here?

4 A Yes, it does.

5 Q Okay.

6 A It's all in one place.

7 Q Which communities are represented here,
8 Mr. Fuller?

9 A Oh, I see. Yes, I see. I'm sorry, what
10 was your question, Mr. Garrett?

11 Q Which communities are represented here on
12 the first page of 26-X?

13 A Let me see. It's going to take a little
14 while. This is the one that's unlabeled. All right.
15 The first line is a cable system in Ashford,
16 Connecticut. The second one is also Ashford. Let me
17 just jot that down. Okay. The next pair, WNET -- the
18 next pair involving WNET is Milford, Pennsylvania, and
19 the next pair involving WYIN is Rensselaer, Indiana.
20 And then we have this next group in Ohio and
21 Pennsylvania, just a moment. The three for WOUC are
22 Stubenville, Ohio, and the three for WQED, a

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1 Pittsburgh station. Wait, I've got one more here than
2 is in my exhibit. There must have been something --
3 there's one missing. I've got NEO and NPB. We must
4 have removed the one for WQEX. That also is
5 Stubenville. So all of those in that last group are
6 Stubenville.

7 Q All right. Let me hand you a document
8 I've marked as JSC Exhibit Number 27-X.

9 (Whereupon, the above-referred
10 to document was marked as
11 JSC Exhibit No. 27-X for
12 identification.)

13 Q And while we're at it, I'll give you 28-X.

14 (Whereupon, the above-referred
15 to document was marked as
16 JSC Exhibit No. 28-X for
17 identification.)

18 A All right.

19 PARTICIPANT: Is 27 and 28 the same?

20 MR. GARRETT: Twenty-seven should be --
21 they're both from Hagerstown. One is for -- 28 is
22 WWPB and 27 is WETA.

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1 PARTICIPANT: I have the exact same
2 document for WWPB.

3 JUDGE von KANN: You have what?

4 PARTICIPANT: I think it might have been
5 just a mistake for me.

6 MR. GARRETT: Okay. You don't have --

7 PARTICIPANT: I don't have WETA.

8 MR. GARRETT: He needs 27. First let me
9 move 26-X for substantive purposes.

10 MR. HESTER: I don't have an objection to
11 that.

12 JUDGE von KANN: All right. So received.

13 (Whereupon, the above-referred
14 to document, previously marked
15 as JSC Exhibit No. 26-X for
16 identification, was admitted
17 into evidence.)

18 BY MR. GARRETT:

19 Q And 27-X, Mr. Fuller, can you identify
20 that for us?

21 A This is a list of the programs carried on
22 WETA for the period February 15 through 21 of 1999.

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1 Q All right. And WETA was one of the
2 stations that you studied in your duplication
3 analysis, correct?

4 A That's right.

5 Q And you studied in the cable system in
6 Hagerstown.

7 A That's right.

8 Q And that's shown on Exhibit 18, your
9 Exhibit 18 and also on 26-X, correct?

10 A Correct.

11 Q All right. And 28-X, can you describe
12 that?

13 A Twenty-eight-X, this is the program
14 schedule for WWPB for that same period in February of
15 1999.

16 Q Okay. And WWPB and WETA were both carried
17 by the Hagerstown cable system.

18 A That's correct.

19 Q Incidentally, you list -- in 26-X, there's
20 indications in other places that particular signals
21 are either L or D; do you see that?

22 A In 26-X?

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1 Q Yes. That was the --

2 A Yes, I see that.

3 Q Okay. And I don't know what -- you said
4 this was not your handwriting, so I don't know if you
5 know the answer, but a number of these signals that
6 were studied were actually partially distant signals
7 on the cable systems, were they not?

8 A That's my understanding, yes.

9 Q Okay. So even though they might be listed
10 here as a D signal, you've been using the designation
11 X for partially distant, correct?

12 A Right.

13 Q And several of these are in fact partially
14 distant signals, correct?

15 A That may be, yes.

16 Q All right. Let me just turn your
17 attention then to the program schedules here. And did
18 you mark these particular schedules here as part of
19 your analysis? Those Xs that we see, are those your
20 Xs?

21 A I was trying to remember because -- those
22 are not my Xs and I'm trying to remember -- I thought

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1 I had done these myself. Because what I did was --
2 no, maybe I had some help. It was last fall and I
3 can't remember exactly what happened.

4 Q All right.

5 A But I just simply ran my finger down the
6 two columns of the two TV station schedules and looked
7 for matches, and then I would put an X.

8 Q Right. That's what I wanted to get into
9 briefly exactly how you did the analysis here. When
10 you say you looked for matches, you looked for matches
11 at the same time -- the exact same half-hour or hour,
12 correct?

13 A Right.

14 Q So, for example, if we look at 27-X, which
15 is WETA, I see an X at 9 a.m. on Monday for
16 Teletubbies; do you see that?

17 A Yes, I do.

18 Q And if I go to 9 a.m. on WWPB, which is
19 28-X, I see Teletubbies there as well?

20 A Right.

21 Q And so because the Teletubbies were
22 broadcast at exactly the same time, that counted as

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1 one duplication, correct?

2 A That's correct.

3 Q On the first day I would see that there
4 are four programs that ran at exactly the same time,
5 correct?

6 A That's right.

7 Q And down on the left hand side there,
8 beneath that first column, there's the number 32; do
9 you see that?

10 A Yes, I see the 32.

11 Q Right. This is on Exhibit 27 here. That
12 reflects the total number of programs that were
13 broadcast by WETA on that particular Monday, correct?

14 A That's right.

15 Q So your analysis was four out of 32
16 programs that were duplicated, correct?

17 A Yes.

18 Q And I guess you would -- in fairness here,
19 you would count it as a duplication even though they
20 might be different episodes, correct?

21 A That's right.

22 Q So, for example, the Teletubbies 136 might

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1 be a different Teletubbies than the -- probably was
2 than Teletubbies 106.

3 A Well, that says right there it is
4 different.

5 Q Okay. If I wanted to just determine how
6 many of the programs on that one day were programs
7 that were carried by both stations, I could do that,
8 could I not, by looking at this exhibit?

9 A Yes, you could.

10 Q And so, for example, I go to WETA Monday
11 at 6 a.m., I see Arthur.

12 A Yes.

13 Q Arthur is also broadcast by -- or was
14 broadcast by WWPB on that particular day, correct?

15 A Yes.

16 Q And Sesame Street was broadcast by WETA
17 and WWPB, correct?

18 A Right, at different times.

19 Q All right. And then we see Arthur again
20 at 8 a.m., so that was also broadcast by both
21 stations, correct?

22 A Yes, it was.

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1 Q And Barney and Friends also was broadcast
2 by both stations, albeit at different times, correct?

3 A Just a moment. Yes. Yes. I found Barney
4 on WWPB. Yes, at quite different times.

5 Q Okay. And then we see our Teletubbies.
6 Going down a little further, again we see another
7 Sesame Street, correct?

8 A The 3821 episode?

9 Q Right.

10 A Yes, I see that.

11 Q And that was broadcast by both WETA and
12 WWPB.

13 A Yes, they were.

14 Q In fact, there was a case where it was
15 exactly the same episode, just a half-hour apart,
16 correct?

17 A That's right.

18 Q And then if I go down, Mr. Rogers'
19 Neighborhood was also broadcast by both WETA and WWPB?

20 A Yes.

21 Q All right. And going further, again we
22 have Teletubbies. That was commonly carried by both

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1 stations, correct?

2 A Yes, they both carried it.

3 Q All right. And if I just keep going down,
4 I would see that if I was just simply looking at the
5 series or the programs that were carried on both
6 stations, that we would come up with a number of about
7 18 that were common to both stations.

8 A That were carried the same day.

9 Q Right. But they might be carried at
10 slightly different times, right?

11 A Yes.

12 Q And they might be different episodes,
13 right?

14 A Yes.

15 Q Right. But they would still be the same
16 series, correct?

17 A Right.

18 Q So if we did that analysis, we would come
19 up with a number of 18 out of over 32 as duplications
20 as opposed to four over 32 as duplications.

21 A Same day duplication.

22 Q Right. Now, a number of these programs

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1 here on WETA that were broadcast on Monday were also
2 broadcast at least later during that week, were they
3 not?

4 A Well, I don't know. They may have been.

5 Q Well, for example, Sesame Street on Monday
6 at 10:30 a.m.; do you see that?

7 A Yes.

8 Q That was also broadcast on Saturday at
9 6:30 p.m. on WETA.

10 A Are you referring to the exact same
11 episode or just the fact that they had Sesame later in
12 the week?

13 Q Well, I think in this particular case, I
14 was referring to the exact same episode.

15 A So you're saying it's on Saturday. Let me
16 just take a quick look. Yes, they did, they repeated
17 it on Saturday morning.

18 Q Right. We could see that particular
19 episode on WETA on Monday and on Saturday. We could
20 also see it on Monday on WWPB, correct?

21 A Yes, that's right.

22 Q And Antiques Road Show, which is on at

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1 eight o'clock, we could also see that same episode on
2 Saturday at four o'clock, correct?

3 A Saturday at four? I don't know, I don't
4 think so.

5 Q Well, we'd actually have to go to --

6 A Am I looking at the wrong station?

7 Q Well, you have to go to WWPB, and it would
8 be on at two o'clock there.

9 A Oh, well, just a moment. I must be
10 looking at the wrong thing, because at two o'clock on
11 Saturday on WWPB, I see Christina Cooks. The Antiques
12 Road Show was on at 7 p.m.

13 Q Right. And it's the same episode that was
14 broadcast earlier in the week on WWPB and also WETA,
15 correct?

16 A Three-oh-five. Yes.

17 Q All right. Just very simply here, it is
18 not uncommon for a PBS station to broadcast one
19 episode at one part of the week and then rebroadcast
20 it again later in that week, correct?

21 A That's right. They do.

22 Q And they may also broadcast it later in

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1 the same day or even the next day, correct?

2 A They might. It depends on -- children's
3 shows -- some children's shows they may do that way.
4 Prime-time shows I think they'll tend to schedule in
5 the evening later in the week or maybe on the weekend
6 day-time.

7 Q And there are some other shows here that
8 aren't duplicated. For example, there's Nature
9 Walking with Giants, the Grizzlies of Sieber, which is
10 on WETA at two o'clock. Might that program be
11 broadcast perhaps in a different week on WWPB?

12 A It may have been a prime-time program from
13 the previous week.

14 Q Okay. I just move the admission of 27-X
15 and 28-X.

16 MR. HESTER: For what purpose.

17 MR. GARRETT: Yes, substantive purposes.
18 It was underlying his testimony.

19 MR. HESTER: I don't object.

20 JUDGE von KANN: So received.

21 (Whereupon, the above-referred
22 to documents, previously marked

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1 as JSC Exhibit Nos. 27-X and
2 28-X for identification, were
3 admitted into evidence.)

4 BY MR. GARRETT:

5 Q Well, thank you, Mr. Fuller. I have no
6 further questions.

7 A Thank you, Mr. Garrett.

8 JUDGE von KANN: Okay. Music, I guess, is
9 next.

10 MS. WITSCHER: Pleased to report we have
11 no questions.

12 JUDGE von KANN: No questions. Mr.
13 Satterfield?

14 MR. SATTERFIELD: I have no questions.

15 JUDGE von KANN: No questions. I guess it
16 is then back to you, Mr. Hester. Mr. Stewart?

17 MR. STEWART: I with trepidation would
18 like to ask for some recross.

19 JUDGE von KANN: Well, you certainly have
20 a right. Would you just as soon have that taken now,
21 Mr. Hester?

22 MR. HESTER: Yes, I would, Your Honor, if

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1 that's okay.

2 JUDGE von KANN: All right.

3 MR. GARRETT: One final housekeeping
4 business matter. May I have that what's up on the
5 board marked as a demonstration exhibit?

6 JUDGE von KANN: You may. At the next
7 break, you can run it and mark it as a demo.

8 (Whereupon, the above-referred
9 to document was marked as
10 JSC Demo 18 for identification.)

11 MR. HESTER: Judge, one housekeeping
12 matter. We've had Dr. Johnson closeted away today,
13 but I presume he's not going to go on. I just wanted
14 to check. I will have I think maybe 15 minutes or
15 more -- roughly 15 minutes for Mr. Fuller, maybe 20,
16 but I'm guessing --

17 JUDGE von KANN: Mr. Stewart, about how
18 long do you think you might be?

19 MR. STEWART: I think 15 minutes.

20 JUDGE von KANN: Okay. Well, it looks
21 like we have a choice here, which is to treat
22 ourselves to actually ending at 5:30 one day like we

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1 said at the beginning we were going to but never did,
2 which would not offend the Panel, I don't think
3 necessarily. And that, I guess, would be my
4 preference provided you're pretty comfortable that you
5 can complete Dr. Johnson tomorrow. I guess tomorrow's
6 your last day. Of course, the other alternative is we
7 could get him in here and take his direct and then
8 break for the day. How -- let's get some estimates on
9 Dr. Johnson perhaps before we make that call. You've
10 been running about an hour or so of direct on each
11 witness.

12 MR. HESTER: We think that's probably
13 about right for Dr. Johnson.

14 JUDGE von KANN: Have we got some
15 estimates from the big three on the cross of Johnson?

16 MR. STEWART: We would have very little
17 for Dr. Johnson.

18 JUDGE von KANN: Very little.

19 MR. STEWART: Right.

20 JUDGE von KANN: Mr. Garrett?

21 MR. GARRETT: I'll have just enough so
22 that we can leave at 5:30 today.

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1 JUDGE von KANN: Okay.

2 (Laughter.)

3 JUDGE von KANN: Mr. Tucci?

4 MR. TUCCI: We would be through with Dr.
5 Johnson in time.

6 JUDGE von KANN: You think you can
7 complete tomorrow. And Music and Canadians don't have
8 a whole lot?

9 MR. SATTERFIELD: Small amount.

10 JUDGE von KANN: Small amount. Well,
11 okay. Why don't we complete this Witness and then
12 break for the day. Do you -- let's see, we've been
13 going here about an hour. Would you just as soon take
14 Mr. Stewart's questions and then have a short break,
15 Mr. Hester?

16 MR. HESTER: That would be all right,
17 sure.

18 JUDGE von KANN: You think you'll be ten
19 or 15 minutes?

20 MR. STEWART: I think so, yes.

21 JUDGE von KANN: Let's go ahead and do
22 that.

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1 MR. HESTER: Okay.

2 RECROSS EXAMINATION

3 BY MR. STEWART:

4 Q Mr. Fuller, I want to direct your
5 attention to Program Suppliers Demonstrative Exhibit
6 Number 6, which Mr. Tucci looked at with you, and also
7 your Exhibit Number 11. And in your Exhibit 11, you
8 provided the first couple of pages of Mr. Sieber's
9 testimony, and in Demo 6, Program Suppliers presented
10 the last couple of pages; is that right?

11 A Yes. And I believe, as someone said
12 earlier, this was not part of the report. This was
13 Mr. Sieber's testimony, I believe.

14 Q Okay. And that's what I want to get to.
15 First, to put this in context, in looking at cable
16 networks, such as A&E and Nickelodeon, those cable
17 networks are advertiser-supported and sell national
18 advertising in their channels worth of programming,
19 correct?

20 A Yes.

21 Q Those cable networks also provide
22 availabilities or spots to allow the cable operator to

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1 sell local advertising, correct?

2 A Yes, they do.

3 Q You talked with Mr. Tucci about the
4 overnight ratings that you look at; do you recall
5 that?

6 A Yes, I do.

7 Q Now, the overnight ratings are national
8 ratings, are they not?

9 A No. Not the ones I'm referring to.

10 Q What are they?

11 A They are local market ratings.

12 Q For which local markets?

13 A Nielsen meters has -- you know what I mean
14 by meters, the measuring device -- installed in 55
15 markets and that's what we use. We average them to
16 together and use that as a proxy for a national
17 measurement.

18 Q There is a national measurement as well,
19 correct?

20 A There is but PBS is not measured on a
21 daily basis by the national service.

22 Q Okay. And the national service does

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1 measure -- and do you know what it's called?

2 A NTI.

3 Q NTI as opposed to NSI?

4 A NSI is local.

5 Q Okay. The NTI uses national meter sample,
6 correct?

7 A That's right.

8 Q And it's the source, for example, for the
9 commercial television networks, ABC, CBS, NBC, to look
10 at their ratings on an overnight basis; is that right?

11 A That's right. On the network level.

12 Q Okay.

13 A Yes.

14 Q Now, are you aware of whether WTBS because
15 it had national coverage also is reported in the NTI?

16 A Actually, they are. It's not NTI
17 literally; it's NHI, Nielsen Home Video Index, which
18 is for cable networks. And they are.

19 Q But they get national ratings, correct?

20 A They do.

21 Q And WTBS because of that was able to sell
22 national advertising time in the programs on WTBS

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1 Superstation, correct?

2 A Yes, I would think so.

3 Q Okay. Now, I'd like to introduce as NAB
4 98-99 Demo 10 the rest of the story.

5 (Whereupon, the above-referred
6 to document was marked as
7 NAB 98-99 Demo 10 for
8 identification.)

9 Q That is, this is the complete direct case
10 testimony of Mr. Sieber, and it's the document from
11 which the first couple of pages of your Exhibit 11,
12 that's Pages 3 and 4 of this Demo, as well as the
13 conclusion pages in Program Suppliers Demo 6, were
14 taken. Do you see that?

15 A Yes. I was just getting familiar with it.
16 Just one moment. Sure enough. There is his
17 conclusion on Page 15.

18 Q Okay. Now, just also to place this in
19 context, this was a proceeding like several prior
20 proceedings in which the Program Suppliers and Sports
21 Claimants were actually litigating aggressively, or at
22 least let's say actively; is that right?

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1 A I would say that's right.

2 Q It's what we refer to as the old good
3 days.

4 (Laughter.)

5 MR. GARRETT: There was no such thing.

6 MR. STEWART: That may be right in
7 retrospect. But the Sports Claimants were attacking
8 the relevance of viewing measures, and the Program
9 Suppliers were attacking the relevance of the Bortz
10 cable operator survey measures, correct?

11 THE WITNESS: I think that's correct.

12 BY MR. STEWART:

13 Q Okay. And if you look at this testimony
14 of Mr. Sieber who is appearing as a witness on behalf
15 of the Program Suppliers, you can see he talks about
16 ratings and how they're used? This is the middle part
17 that was left out of the materials that were presented
18 to the Panel previously. And if you go back to Page,
19 let's say, 14, just before the conclusion --

20 A All right.

21 Q -- you see there that Mr. Sieber after
22 this discussion of ratings and various aspects of

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1 sports program rights and the like on WTBS presents
2 here some analysis about the relative contributions of
3 sports programs to viewing and add revenue and so on;
4 do you see that?

5 A Yes, I do.

6 Q And at the bottom of the page in a box he
7 talks about how syndicated programs represented 80
8 percent of ad revenue generated by distant signal
9 component of TBS' audience; do you see that?

10 A I do.

11 Q And so that then puts his conclusion pages
12 in better context, is that right, Pages 15 and 16 --
13 or Page 15 that Mr. Tucci read into the record
14 previously? It makes a bit more sense with those
15 middle pages provided, does it not?

16 A Let me have just a moment to digest this.
17 I believe his point here, because I'm not entirely
18 sure what this table represents, is that the majority
19 of their audience as well as the majority of their
20 revenue by a long shot comes from syndicated
21 programming. So he's placing a very big importance on
22 Nielsen ratings.

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1 Q Okay. And WTBS sold advertising time and
2 made revenues through the sale of national advertising
3 in its programs, correct?

4 A Yes.

5 Q Now, going back then to your Exhibit 11,
6 which Mr. Sieber described on Pages 3 and 4 of his
7 testimony, and those are pages you've presented here,
8 as we saw before in the pages taken from the
9 underlying survey, the objective of this survey was
10 for strategic planning purposes for WTBS as a cable
11 network; is that right?

12 A Yes. My understanding was that it was for
13 them to fine tune their program schedule, to adjust
14 the content to match the needs of their subscribers.

15 Q Do you know whether when WTBS converted to
16 a cable network in 1998 it actually reduced the number
17 of baseball games that it carried in 1998?

18 A I'm sorry, I don't know. I really don't
19 know.

20 Q Do you know whether WTBS when it converted
21 to a cable network improved the quality of the
22 syndicated programs that it broadcast as opposed to

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1 those that it broadcast while it was a distant signal?

2 A I'd have to guess, I don't know. I don't
3 want to guess.

4 Q Thank you. I have no further questions.

5 JUDGE von KANN: All right. Any other
6 parties other than Mr. Hester have anything? Do you
7 need a full 15, Mr. Hester, or would ten --

8 MR. HESTER: Ten would be fine.

9 JUDGE von KANN: Let's take ten minutes,
10 then you can come back and finish.

11 MR. HESTER: Okay. Thank you.

12 (Whereupon, the foregoing matter went off
13 the record at 5:01 p.m. and went back on
14 the record at 5:16 p.m.)

15 JUDGE von KANN: Mr. Hester?

16 MR. HESTER: Thank you.

17 All right, Mr. Fuller. I just have a few
18 questions for you.

19 REDIRECT EXAMINATION

20 BY MR. HESTER:

21 Q Let me ask you to turn first back to
22 Program Suppliers exhibit Demo 8. This is the one PBS

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1 keeps on site about cable.

2 A I just stacked everything up. Just a
3 minute. Thinking about getting out of here.

4 Q I can't imagine why.

5 A All right. I have it.

6 Q If you look at the third page of that
7 document under the heading "For Can You Say Ancillary
8 Shares," do you remember Mr. Tucci asked you questions
9 about this part of the article?

10 A Yes, I remember.

11 Q And, in particular, it talks about deals
12 relating to toys and books associated with PBS shows?

13 A Yes, I remember.

14 Q Do you recall that?

15 A Mr. Tucci had asked you a question as to
16 whether books featured on Reading Rainbow were part of
17 these arrangements that are discussed in this article.
18 Do you recall that?

19 A Yes.

20 Q Is there any reference in here to Reading
21 Rainbow books being part of the deal that is discussed
22 here?

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1 A No.

2 Q What kinds of book deals are being
3 discussed here?

4 A Well, they mention Barney and Teletubbies
5 and then a couple of prime time programs, Lewis and
6 Clark and Stephen Hawking's Universe.

7 Q So those would be books related to a
8 program developed or paid for in part by Public
9 Television?

10 A Yes.

11 Q And is one example some of the
12 merchandising money that has been generated by Barney
13 after Public Television developed that into a major
14 brand?

15 A That's right.

16 Q Could you just explain a little bit more
17 about what happened in relation to Barney after Public
18 Television had developed it into a major figure or
19 icon?

20 A Well, it became a very valuable property.
21 I mean, the videos have been a good seller because of
22 its awareness and its popularity and the fact that the

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1 children love it. So there have been -- I know there
2 have been a number of plush toys made and sold.

3 I don't know the figures, but I know
4 because of its popularity, it was able to sell
5 merchandise. And I believe it has been quite
6 successful at that.

7 Q Did PBS share in some of that?

8 A A small part of it, as I recall.

9 Q Was that part of what was trying to be
10 changed in this time frame to give PBS a fair share of
11 that sort of revenue?

12 A That's what I recall from that time.

13 Q Let me ask you, over on the next column of
14 that same section, right above the photograph of Mr.
15 Duggan with Ken Burns, there is a sentence in the
16 right column, "We return almost all of that to good
17 programming." Do you see that?

18 A Yes, I do.

19 Q Do you agree with that statement?

20 A Of course. I mean, that's what the
21 fund-raising is for, is to support the programming.
22 We are a nonprofit organization.

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1 Q So these efforts to develop book deals or
2 extra underwriting funds were to finance more
3 programming for Public Television?

4 A Absolutely.

5 Q Let me ask you to turn back to page 21 of
6 this document. It's the prior page of the exhibit.
7 Over in the right-hand column, Mr. Tucci had asked you
8 about Nickelodeon buying the rights to the entire
9 Children's Television Workshop. Do you see that?

10 A Yes.

11 Q And it refers there to a planned
12 commercial-free educational network called the Noggin.
13 Do you see that?

14 A Yes, I do.

15 Q Was that introduced during this period,
16 the Noggin?

17 A Was that network launched at that time?

18 Q Yes.

19 A I'm sorry, Mr. Hester. I don't recall.
20 It hasn't been a very -- been in existence for a very
21 long time. And I am not sure it is now.

22 Q Are you aware of whether there is any such

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1 thing, even today, in existence?

2 A This is just recall from what I have seen
3 in the trade press. I think it was a partnership of
4 Children's Television Workshop and I guess
5 Nickelodeon. I think that's right. There was some
6 other party.

7 And I believe CTW sold out their portion
8 of it. I think they're now out of it or don't have
9 anything to do with it anymore.

10 Q During the years 1998 and 1999, there was
11 no such educational network called the Noggin, was
12 there?

13 A Well, see, that's what I can't recall in
14 '98-'99 if that was the case.

15 Q Okay.

16 A That's a fact that I don't know.

17 Q By the way, there is a reference in that
18 sentence to a commercial-free educational network. Do
19 you see that?

20 A Yes.

21 Q Mr. Tucci had asked you some questions
22 about the lack of commercials on Public Television and

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1 had you whether that simply related to the format of
2 the programming. Do you recall that?

3 A Yes.

4 Q You discuss in your testimony why the lack
5 of commercials on Public Television would have value
6 to a cable operator. Do you recall that testimony?

7 A Yes, I do.

8 Q Could you explain that, please?

9 A Well, the value to the cable operator is
10 certainly to satisfy the needs of the subscribers, who
11 have said in various surveys, including one we
12 submitted as evidence, that they value a noncommercial
13 environment, especially for children. Is that an
14 answer?

15 Q I just wanted you to expand a little bit
16 on whether you accepted Mr. Tucci's comment that that
17 is simply an element of the format of the programming
18 that doesn't bear on its value.

19 A I don't accept that because it does bear
20 on the value. I think it makes Public Television a
21 more attractive channel to offer on a cable system.

22 Q Mr. Tucci had put up an example on the

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1 board, Mr. Fuller. It's since been lost to Mr.
2 Garrett. He had an example up on the board of a
3 comparison between Nickelodeon and how much it might
4 cost a cable system with 30,000 subscribers versus a
5 cost he imputed for carrying a distant Public
6 Television signal. Do you recall that?

7 A Yes, I do.

8 Q Now, in relation to the amount that might
9 be paid for Nickelodeon, are there advertising slots
10 provided by Nickelodeon to the local cable operator?

11 A Yes, there are.

12 Q So would those advertising availabilities
13 be an offset against the license fee paid for
14 something like Nickelodeon?

15 A Absolutely. It's another source of
16 revenue and would offset it.

17 Q And is that different from what would be
18 relevant with respect to a distant signal?

19 A That's right because there would not be
20 any availabilities in the distant signal for them to
21 insert local commercials and make revenue off of it.

22 Q So would you expect, in fact, to see

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1 higher license fees paid for a cable network where
2 there were advertising availabilities made or given to
3 the local cable operator?

4 A Most definitely.

5 JUDGE GULIN: I am sorry. As compared to
6 what?

7 BY MR. HESTER:

8 Q As compared to a cable network where there
9 were no advertising availabilities provided?

10 A Yes.

11 JUDGE GULIN: I guess that assumes that
12 everyone has exactly the same programming. Obviously
13 HBO doesn't have advertising. That's a lot more
14 expensive than the cable networks that have
15 advertising, right, all else being equal, I guess?

16 THE WITNESS: Yes, right. That is a good
17 way of putting it.

18 BY MR. HESTER:

19 Q Mr. Tucci also derived an amount that
20 might be paid for that hypothetical cable system with
21 respect to Public Television as a distant signal. Do
22 you recall that?

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1 A Yes.

2 Q To your understanding, what does the cable
3 operator have to pay in order to gain access to a
4 Public Television distant signal? Does it have to pay
5 a market price?

6 A No.

7 Q What does it pay?

8 A I don't believe it pays anything.

9 Q Does it pay a compulsory license fee?

10 A Oh, I'm sorry. Yes, of course, it does.

11 There is that --

12 JUDGE von KANN: That which brings us
13 here.

14 THE WITNESS: Yes, of course. What am I
15 saying.

16 MR. HESTER: We are gathered here today.

17 THE WITNESS: I am losing brain power
18 fast.

19 BY MR. HESTER:

20 Q Could there be in your mind, Mr. Fuller,
21 a difference between what the cable operator has to
22 pay to obtain access to a distant signal and the value

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1 it would place on it?

2 A I'm sorry. Ask that again.

3 Q Could there be a difference between the
4 amount that a cable operator has to pay as a
5 compulsory license to obtain a distant signal versus
6 the value it would place on that distant signal in
7 terms of the programming it offers?

8 A I believe so, yes.

9 Q Can you explain that, please?

10 A Yes because I don't think in every case
11 that the amount of money paid translates into value to
12 the cable operators. I mean, look at the example of
13 Nickelodeon, for example. They get avails and for
14 local sales, in addition to the program service
15 itself.

16 And in the case of PBS, there are all of
17 the advantages that we discussed earlier that the
18 cable operator gets for the benefit of attracting
19 subscribers and retaining subscribers.

20 Q Mr. Tucci had put up the example of
21 Nickelodeon. I now wanted to ask you to turn to
22 another exhibit, Program Suppliers exhibit 34-X,

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1 please. I can show this to you quickly, Mr. Fuller.

2 A Oh, okay. Okay.

3 Q Let me show you Program Suppliers 34-X and
4 then Program Suppliers Demo 9. Do you recall Program
5 Suppliers Demo 9? This showed average ratings.

6 A Yes, I do.

7 Q For different cable networks. And then it
8 showed an average rating for PBS?

9 A Yes.

10 Q So, for instance, for PBS, he showed a
11 decline of ten percent from '97-'98 to '98-'99 because
12 of the drop in the ratings from 1.0 to 0.9, right?

13 A That's right.

14 Q Now, first of all, let me ask you to
15 explain again. Are these ratings between PBS and
16 these other services directly comparable?

17 A They are directly comparable. They are
18 all total U.S. as the basis.

19 Q You had made a point before about the
20 difference between a 24-hour day on some of these
21 examples versus PBS.

22 A Oh, that. All right. And in that

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1 respect, no, they're not, because PBS is on the air
2 less than 24 hours.

3 Q One of the ones that was omitted from Mr.
4 Tucci's Demo 9 was Nickelodeon. I simply wanted to
5 show you on Program Suppliers exhibit 34-X. If you
6 could look at the ratings for Nickelodeon between
7 '97-'98 and '98-'99, what do they show?

8 A They show that it went down from a 1.2 to
9 a 1.1, which is a decline of 8 percent.

10 Q So if Nickelodeon had been included on
11 Program Suppliers Demo 9, that would have shown a
12 decline comparable to the one shown for PBS?

13 A That's right.

14 JUDGE YOUNG: I am sorry. What page on
15 34-X are you looking at?

16 MR. HESTER: I am sorry, Your Honor. It's
17 914 working off of the bates stamp.

18 JUDGE YOUNG: Okay.

19 MR. HESTER: I think that's the right
20 number for the sources.

21 BY MR. HESTER:

22 Q Mr. Fuller, you had made a point that

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1 ratings during this period for start-up cable networks
2 would be affected by their increase in penetration.

3 A I did say that.

4 Q Could you explain what you mean by that?

5 A Well, that's when the ratings are
6 calculated on the total U.S. population as the
7 denominator. So if a cable network starts out in the
8 very beginning with a small number of subscribers,
9 then, of course, it's whatever the number of actual
10 viewers are within that little subscriber universe
11 when divided by the total United States population.
12 You're going to have a very small or even a
13 non-reportable, below minimum rating situation with
14 Nielsen.

15 Q So let me just take a concrete example.
16 If you had a cable network that was on a certain
17 number of systems, let's say it's X number of systems
18 and the cable network has a two rating measured on
19 this U.S. basis. Okay? Are you with me so far?

20 A Uh-huh.

21 Q And if the cable system in the next period
22 is carried on 2-X number of systems --

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1 A You've doubled the number of systems.

2 Q You've doubled the number of systems, but
3 the viewing within any particular system remains the
4 same.

5 A Right.

6 Q What happens to the total rating?

7 A It doubles.

8 Q And so the rating could double simply
9 because you have added more subscribers who have the
10 opportunity to watch. It doesn't necessarily tell you
11 that the level of viewing on any particular system has
12 changed, does it?

13 A Not on any particular system, no, it does
14 not, because you're adding more and more systems and
15 more and more subscribers. And that is enlarging the
16 probability that a person will watch within the total
17 United States population.

18 JUDGE YOUNG: That goes to the picture we
19 were referring to yesterday between ratings and share.
20 Is that what you're saying?

21 THE WITNESS: Yes.

22 JUDGE YOUNG: Rating as availability,

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1 share is actual viewing?

2 THE WITNESS: Well, it is a similar
3 concept. That's -- the share is among households
4 where the set is turned on to something, in use. So
5 that is the viewing population. And then you compute
6 a share of those, even though it may be small, like
7 Sunday morning.

8 This is -- and so it's a similar idea
9 mathematically where you've got a small number of
10 people who could see it at all in the case of a
11 start-up network.

12 JUDGE YOUNG: We should be careful, then,
13 when looking at PS 34-X that that is referring to
14 rating, as different from shares?

15 THE WITNESS: Yes. There's no shares in
16 34-X. We don't usually use shares.

17 So, to summarize, growth can be -- growth
18 with a rating in a new cable network can be entirely
19 as a result of increasing penetration, a greater
20 number of subscribers without any increase in the
21 rating within each cable system.

22 MR. HESTER: Okay.

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1 BY MR. HESTER:

2 Q I wanted to ask you about some questions
3 Mr. Garrett raised with you concerning the percentage
4 of households with children under 12. Do you recall
5 that discussion?

6 A Yes, I do.

7 Q And if I can find it here, I wanted to
8 refer back first to your testimony from the 1990 to
9 '92 case. Do you have that there, Mr. Fuller?

10 A I'm trying to find it. Just a moment.
11 Yeah, I have it, Demo 16.

12 Q If you do, you're ahead of me.

13 A Do you want mine?

14 Q No. Okay. Mr. Fuller, let me ask you to
15 turn to the page in that testimony where you gave this
16 figure on the percentage of households with children
17 under 12. I think --

18 A It's going to take a moment. It's deep in
19 the report. It's on page 2.

20 Q What I needed to do was to find the later
21 source for that. I'm sorry. Yes. It's page 14. Are
22 you in JSC Demo 16, Mr. Fuller?

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1 A I am.

2 Q And do you see page 14?

3 A I'm there.

4 Q This is where you make the statement in
5 your prior testimony, "Over one-third of all
6 households in the United States have children under
7 the age of 12. Nearly one in six have children under
8 six"? Do you see that?

9 A Yes, I see that.

10 Q What is the source given there?

11 A It's the Bureau of the Census. It's one
12 of their public population publications.

13 Q Now I wanted you to turn to the place in
14 your current testimony where you give a comparable
15 number, which is going to be page 9. This is where
16 you say, "Twenty-eight percent of all households in
17 the United States had children under the age of 12."

18 A Yes, I see that.

19 Q What is your source there?

20 A That source is Nielsen.

21 Q So these two numbers were sourced from
22 different places?

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1 A They were.

2 Q Is that right? Let me ask you. I'm sorry
3 I don't have copies of this. Oh, you do have copies
4 of it?

5 MR. HESTER: Your Honor, maybe I should
6 just ask for a piece of clarification on this. This
7 is the source material that underlay the witness'
8 citation in the 1990 to '92 case on this point. It's
9 now become an issue that we need to clarify. I guess
10 that this should be presented as an exhibit of some
11 sort.

12 JUDGE von KANN: This is from the Bureau
13 of the Census report?

14 MR. HESTER: Yes. It's from the Bureau of
15 Census.

16 JUDGE von KANN: We could probably take
17 public notice.

18 MR. HESTER: You can probably take notice
19 of it.

20 JUDGE von KANN: Is anybody going to have
21 objection to receiving the Bureau of Census pages on
22 which this earlier testimony is based?

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1 (No response.)

2 JUDGE von KANN: It doesn't sound like it.

3 MR. HESTER: Okay.

4 JUDGE von KANN: So why don't you mark it
5 as your next exhibit number, whatever it would be.

6 MR. HESTER: Twenty-seven. So this would
7 be PTV exhibit 27.

8 (Whereupon, the aforementioned
9 document was marked for
10 identification as PTV Exhibit
11 Number 27.)

12 BY MR. HESTER:

13 Q Mr. Fuller, pointing you to PTV exhibit
14 27, is this the source that you relied on in your 1990
15 to '92 testimony in providing the statement about the
16 percentage of households with children under the age
17 of 12?

18 A Yes, it is.

19 Q I wanted to direct you to the second page
20 of the document, please. There is a number there for
21 total households if you look up at the top of the page
22 of 95 million total households. Is that right?

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1 A That's right.

2 Q And then it shows underneath it with
3 members of either sex first under 6 years and then,
4 second, 6 to 11 years?

5 A Yes.

6 Q And is that the source material that went
7 into the figure that you gave there of one-third of
8 all households having children under the age of 12 or
9 over one-third?

10 A Yes, it is.

11 Q Could you explain whether there is some
12 error or anomaly in those data?

13 MR. GARRETT: I think I am going to
14 object. Is the purpose of this to impeach the
15 testimony he gave to the arbitration panel back in
16 1992? Is the purpose to show that that testimony that
17 he gave the panel at that time was wrong and the
18 number that was in the record then is no longer to be
19 considered in the record then because he has got a new
20 document that was faxed over to him a few minutes ago?
21 I think this is highly --

22 MR. HESTER: Could I be heard on this?

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1 JUDGE von KANN: Yes.

2 MR. HESTER: I don't believe, in fact,
3 that this number was anything more than a rough
4 benchmark in the prior proceeding. It was just out
5 there to put it in context. But it has now been
6 raised by Mr. Garrett on cross-examination with the
7 implication that there was a decline in the importance
8 of children's programming because there is a lesser
9 proportion of households with children under the age
10 of 12.

11 We have used a different source because
12 there was a mistake in the prior source. In the last
13 case, it wasn't an issue. Now it's been made an
14 issue.

15 I could do it another way, but I thought
16 this was the most appropriate way, to lay out why we
17 used a different source this time. I don't think, in
18 fact, that the issue, the difference should matter to
19 anyone, but it was made an issue in the
20 cross-examination. That is why I am trying to address
21 the point.

22 MR. GARRETT: First of all, I was simply

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1 following up the questions of Judge Young. He had
2 asked the question of the witness. The witness
3 couldn't remember what he had testified to the last
4 time. I simply brought up what was testified to
5 before the arbitration panel.

6 To say that that wasn't at all significant
7 to the panel, how do we even know that as we speak?
8 That could very well have been something that was
9 important. That was the number that was in the
10 record.

11 They came forward, and they represented to
12 the arbitration panel that the number was over a
13 third. And no one here knows exactly what went on in
14 deliberations or how that might have influenced
15 deliberations in any way.

16 I just don't think it's proper to years
17 after the fact be impeaching the testimony that you
18 gave in that prior proceeding.

19 JUDGE von KANN: Let us speak for a
20 second.

21 (Whereupon, the panel conferred off the
22 record.)

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1 JUDGE von KANN: Overruled. We think it
2 goes to weight, and we'll hear. You can ask it.

3 MR. HESTER: Okay.

4 BY MR. HESTER:

5 Q Mr. Fuller, could you explain whether
6 there is some anomaly or error in these figures in
7 relation to the question of the number of households
8 in the U.S. with children under the age of 12?

9 A There was an error made in the way the
10 calculation was done in the '92 data here. There is
11 two groups of children, 17,178.

12 Q Seventeen million?

13 A I'm sorry. Seventeen million if this is
14 minus the three zeros. Yes, numbers in thousands and
15 then the 16,830,000. Whoever prepared this statistic
16 -- perhaps it was me -- added the two together and
17 divided by total households, which gave that greater
18 than 33 -- greater than one-third figure.

19 The problem with that method is that it
20 doesn't remove duplication of children within the same
21 household from the two different age groups. One
22 household could have a four-year-old and a

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1 nine-year-old. And in counting both groups and
2 dividing by total households, you then overstate the
3 size of the -- I don't think I said that right.

4 Well, adding these two together includes
5 children that -- that counts children twice that are
6 in the same household. So you end up with what seems
7 to be a larger number of households having these
8 children of this age group.

9 What were used this time was Nielsen's
10 data, which is totally unduplicated and tells you the
11 number of children age under 12 that are in TV
12 households.

13 Q So the Nielsen data that you relied on at
14 page 9 in your testimony this time you would consider
15 more accurate for this purpose?

16 A Absolutely.

17 Q Do you know off the top of your head what
18 the comparable number is for the 1990 to '92 period?

19 A No, I don't know, but I was surprised when
20 I was shown my previous testimony and saw that there
21 was that much of a gap. I think we figured about six.
22 Was it six points? Because I would expect it to be

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1 much lower than that, maybe one or two points.

2 Q When you say you "would expect it to be
3 lower," what do you mean by that?

4 A That the figure in the '90-'92 proceeding
5 would have been closer to the 28 that we're citing now
6 in the '98-'99.

7 JUDGE von KANN: If I am understanding
8 you, this anomaly, if you will, in the Census data was
9 something you discovered after the earlier proceeding
10 was over and in preparing your testimony here? That's
11 when it came to your attention?

12 THE WITNESS: That's exactly right.

13 BY MR. HESTER:

14 Q Mr. Fuller, there was some questioning
15 about exhibit 21 which showed the change in fees paid
16 for various cable networks as between 1992 and
17 1998-'99. Do you recall that?

18 A I think so. I'm a little vague on it.
19 What was the exhibit again? Maybe I could find it.

20 Q It's exhibit 21. I really wanted to point
21 you to a passage in your testimony.

22 A All right.

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1 JUDGE GULIN: Of your own testimony,
2 exhibit 21.

3 THE WITNESS: Oh, okay.

4 MR. HESTER: Yes. It was exhibit 21.

5 THE WITNESS: All right.

6 BY MR. HESTER:

7 Q What I really wanted to focus you on, in
8 addition to exhibit 21, is the bottom of page 18 of
9 your testimony.

10 A Did you say page 18?

11 Q Yes.

12 A All right. I have it.

13 Q At the bottom of page 18, you talk about
14 the fact that licensees for Nickelodeon, Discovery, A
15 and E, and The Learning Channel more than doubled from
16 1992 to 1998. Do you see that?

17 A That's on page 18?

18 Q I think so.

19 A I'm sorry.

20 Q Fifth line from the bottom.

21 A I must be going blind. I see an average
22 of --

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1 Q Second sentence.

2 A From '92 to '98?

3 Q Yes.

4 A I'm sorry. Yes. I see it.

5 Q Okay. Are you with me?

6 A Yes.

7 Q I just wanted you to comment on that
8 point, to explain why you cited that point in relation
9 to discussing the value of Public Television
10 programming as a distant signal.

11 A Well, my point in mentioning that was
12 simply to make the statement of kind of a relativity
13 statement that these particular channels carried
14 programming that in some ways is similar to what
15 Public Television offers.

16 And their value has more than doubled over
17 this period of time. And we feel that if cable
18 operators are willing to pay that, that they must
19 value Public Television more.

20 Q Could you look at JSC 34-X, please?
21 Actually, I think it's -- sorry.

22 MR. HESTER: I'm sorry, Your Honor.

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1 Program Suppliers 34-X. It's the cable audience
2 report. Sorry. We're all running out of gas here.

3 BY MR. HESTER:

4 Q Mr. Fuller, over on the left-hand column
5 on the first page, Mr. Garrett had asked you a
6 question about "Sports programming continues to drive
7 the largest audiences to cable." Do you see that?

8 A Yes.

9 Q Is that discussing sports programming on
10 distant signals?

11 A It's just in general.

12 Q So that comment includes sports
13 programming on what kinds of channels?

14 A Any of the cable channels that offer
15 sports, like ESPN, which are, of course, widely
16 available.

17 Q When you talk about driving audiences to
18 cable, is that discussing, in particular, sports cable
19 networks? Is that what --

20 A It is, in fact, because the context --
21 this is the cable audience report. And that's what
22 that is about.

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1 Q So it would include as well ESPN regional
2 sports networks?

3 A Yes, sure, although her statement here in
4 this analysis is based on a ranking of the top 100
5 programs. So if a regional network had a large
6 rating, then it would have shown up in the report --
7 and shown up in the report, then yes, that would be
8 the case.

9 However, we do not provide it in this
10 report. The ranking that's in appendix 5 excludes, I
11 think it says, sports and -- I've forgotten what, but
12 this is a ranking of just direct comparison of cable
13 channels, A and E, Discovery mainly, History.

14 Q Okay. Mr. Garrett asked you about the
15 amount of duplication in schedules, and he showed you
16 a few examples. Do you recall that?

17 A Yes.

18 Q I wanted you to discuss, in particular,
19 some of the points Mr. Garrett raised with you about
20 same-day programming of different kinds of children's
21 programs. Do you recall he asked you questions about
22 children's programs that would be found on the same

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1 day --

2 A Right.

3 Q -- on different signals. Do you recall
4 that?

5 A I do remember it.

6 Q Could you discuss whether schedule
7 diversity is particularly beneficial and valuable in
8 relation to children's programming?

9 A I think it is because it makes a good
10 program available at different times of the day when
11 a child can find it. Some are in school. Some are in
12 preschool. Some are in day care centers. And some
13 can see a program in the morning but not in the
14 afternoon. Others can see it in the afternoon but not
15 in the morning. This is -- I think provides a
16 valuable service to the children and to the family.

17 Q Mr. Garrett had also asked you questions
18 as to whether the cable systems that would place the
19 highest value on a Public Television distant signal
20 would be those that have no local Public Television
21 signal. Do you recall that?

22 A Yes, I do.

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1 Q Would it always be the case in your view
2 that the highest value would be placed on a Public
3 Television distant signal by a system without a local?

4 A Not in every case because the schedules
5 can be so very different one from another that it's
6 hard to say which is more valuable. If you've got two
7 signals that are very different, they have different
8 content, a lot of different scheduling, then they're
9 both valuable.

10 Q And could there also be differences in
11 value for particular cable operators depending on the
12 nature of their subscriber base?

13 A Yes, that could be. The subscriber bases
14 would change, I suppose, depending on the community.
15 In a different population group, some communities will
16 have more children than others will have or more or
17 less education in a given community. And so the cable
18 operator is going to be selecting channels to bring in
19 to fit the needs of the community.

20 Q Okay. I just had one more question for
21 you, I think. Mr. Garrett had asked you some
22 questions about the number of Public Television

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1 distant signals carried by Form 3 systems in 1992
2 versus '98 and '99. I believe he recited a figure of
3 395 signals carried as distant signals during 1992.

4 MR. GARRETT: I think that is not right.
5 I was referring to the systems.

6 MR. HESTER: You were referring to
7 systems?

8 MR. GARRETT: Yes. And that is all that
9 was shown on that exhibit I handed out.

10 MR. HESTER: You weren't talking about
11 signals? Can you get up here?

12 MR. GARRETT: If you've got another
13 half-hour. But no. I thought I made that clear. The
14 exhibit only talks about cable systems.

15 MR. HESTER: Okay. Well, then I don't
16 need to ask the question.

17 JUDGE von KANN: Sounds good.

18 MR. HESTER: I don't need to clean it up
19 because you just cleaned it. Okay. Thanks. I didn't
20 understand you, Bob. I usually don't.

21 MR. GARRETT: I can't believe that.

22 JUDGE von KANN: Is that it?

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1 MR. HESTER: That's all I have. Thank
2 you, Mr. Fuller.

3 JUDGE von KANN: Thank you.

4 THE WITNESS: Thank you.

5 JUDGE von KANN: Does anyone have any
6 recross precipitated by that redirect?

7 RECROSS-EXAMINATION

8 BY MR. GARRETT:

9 Q Mr. Fuller, let me just ask you to turn to
10 --

11 JUDGE von KANN: Can I just make one
12 observation that it seems to me that about this point
13 each day, we get into that syndrome, which is not
14 uncommon in these situations, in which the lawyers
15 basically want to argue the cases more than ask
16 questions of the witnesses.

17 In many of these instances, you all are
18 directing us to different pieces of the record, which
19 you will undoubtedly do in your proposed findings, and
20 making arguments about that.

21 I think we all appreciate that that is
22 going on. To the extent that we all, including the

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1 witness, are pretty tired, I think we should try to
2 keep that to a minimum.

3 You all have got a hefty record to argue
4 from, and there are a lot of arguments that you will
5 be no doubt making. So let's try to make sure, not
6 just today and not just with this witness but in
7 general that we try, particularly when witnesses are
8 really pretty tired, that we truly ask for testimony
9 from them, rather than making argument.

10 Mr. Garrett?

11 MR. GARRETT: The record is five days for
12 a witness.

13 BY MR. GARRETT:

14 Q Let me just ask you to turn to exhibit
15 34-X, Mr. Fuller.

16 A All right.

17 Q Again, this is the reference there to
18 "Sports programming continues to drive the largest
19 audiences to cable." Do you see that?

20 A Yes, I do.

21 Q You say you were referring to PBS research
22 was referring normally to regional sports networks or

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1 ESPN?

2 A We were referring to cable networks,
3 whatever they are, because this is based on the
4 programming we obtained from Nielsen, you know, and
5 it's whatever they're reporting.

6 Q Would you consider WGN to be a cable
7 network?

8 A I'm not sure whether we do or not.

9 Q Well, let me direct your attention to --

10 A WGN-C. Is that it?

11 Q Yes.

12 A Then we have --

13 Q Look at appendix 1, for example. You
14 include data there for WGN cable. Do you see that?

15 A It's there, yes.

16 Q Okay. So that would be one of the
17 networks that you were referring to?

18 A Yes.

19 MR. GARRETT: I have no further questions.

20 JUDGE von KANN: Mr. Tucci?

21 MR. TUCCI: Just briefly.

22 RECROSS-EXAMINATION

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1 BY MR. TUCCI:

2 Q Mr. Fuller, Mr. Hester asked you questions
3 about the availability of the insertion of local
4 commercials on cable network programming. Do you
5 remember that?

6 A I do.

7 Q You have never operated a cable system or
8 worked in one. We established that earlier. Right?

9 A That's right.

10 Q Do you have any idea the amount of revenue
11 that cable systems generate from advertising, either
12 on a specific or a general basis?

13 A Just on a general basis. I know that it's
14 the minority of what they generate. It's probably an
15 important part but -- shall I go ahead or --

16 JUDGE von KANN: Why don't you wait just
17 a second and let there be light. Let's see if it
18 works.

19 (Pause.)

20 THE WITNESS: Okay. Well, let me just
21 shorten the answer that I think most of their revenue
22 comes from subscriber fees.

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1 BY MR. TUCCI:

2 Q And if we've received testimony from
3 actual operators, that would be a more reliable
4 indication about these issues? It would be a more
5 reliable source of information than from you, correct?

6 A Well, certainly.

7 Q The infamous PS 34-X, if you could get it
8 out and look at it? I'm going to ask you some
9 questions just to make sure the record is totally
10 clear on the PTV 000914 page.

11 Mr. Hester asked you about the rating for
12 Nickelodeon for the time period 1997 to '98 to 1998 to
13 '99. And then it went down. Do you see that?

14 A Yes.

15 Q Do you also see that between 1994 and 1997
16 it appears to have risen by approximately what, 33
17 percent?

18 A That's right.

19 Q And on the issue of penetration, we can
20 figure out what the penetration of Nickelodeon was for
21 various years in 1994, 1995, et cetera, et cetera, by
22 reference to industry publications like Kagens,

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1 couldn't we?

2 A Well, it's also in this exhibit.

3 Q PTV page?

4 A It's appendix 1.

5 Q Appendix 1. Great.

6 MR. TUCCI: That's all I have.

7 JUDGE von KANN: Anyone else?

8 (No response.)

9 JUDGE von KANN: All right. Let's break.

10 Mr. Fuller, you're done. Thank you very much.

11 (Whereupon, the witness was excused.)

12 JUDGE von KANN: Let me just confirm that
13 we have Dr. Leland Johnson for tomorrow, and then the
14 musicians start. And I understand that we're starting
15 out with Seth Saltzman and Snuffy Walden. Is that
16 correct? And they're both on for Friday. Is that it?

17 Does your schedule remain the same as you
18 gave it earlier? Okay. Thank you. See you all at
19 9:30.

20 (Whereupon, at 6:01 p.m., the foregoing
21 matter was recessed, to reconvene at 9:30
22 a.m. on Thursday, May 15, 2003.)

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CERTIFICATE

This is to certify that the foregoing transcript in
the matter of: Hearing: Distribution of the
 1998 and 1999 Cable Royalty Funds

Before: Library of Congress
 Copyright Arbitration Royalty Panel

Date: May 14, 2003

Place: Washington, DC

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
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